Public Utilities

FORTNIGHTLY

May 24, 1945

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PUBLISHERS

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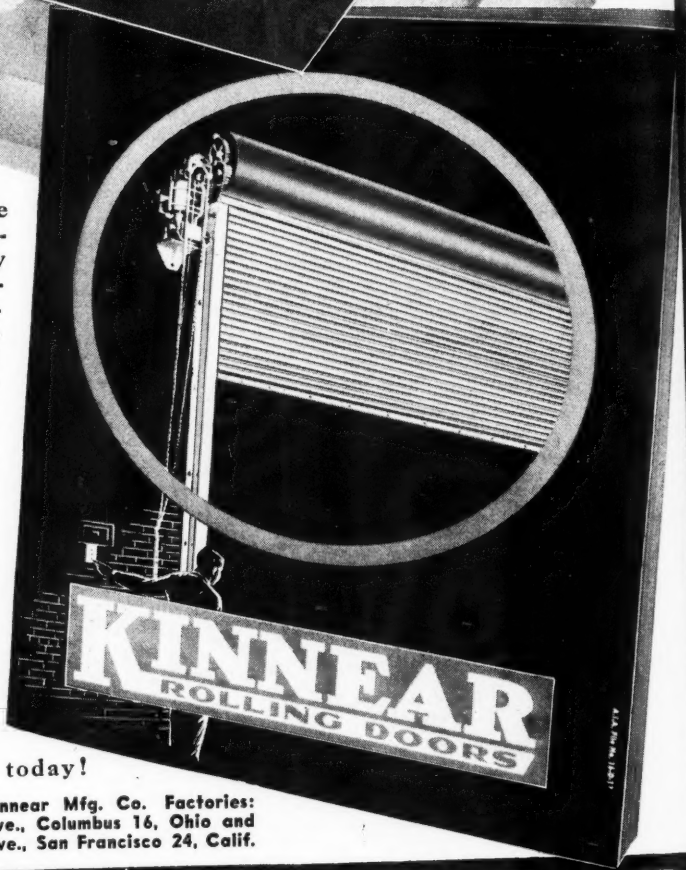

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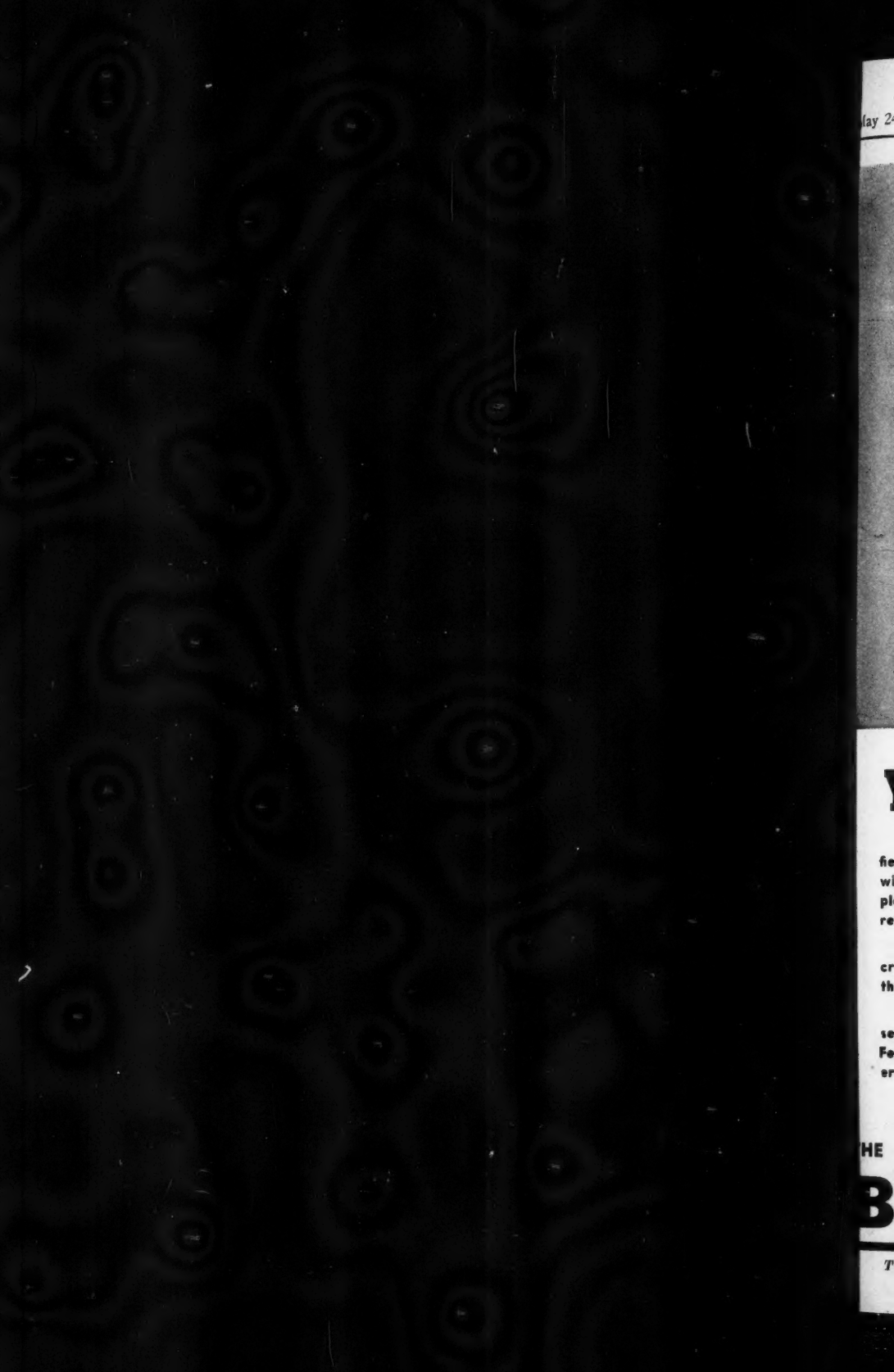
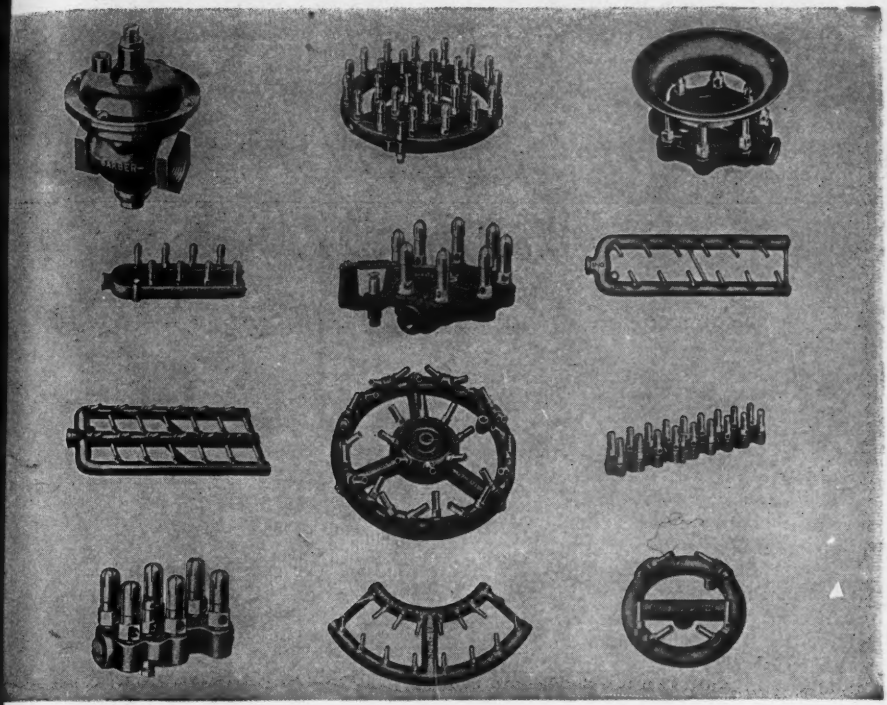
ROLLING DOORS





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Public Utilities Fortnightly

VOLUME XXXV *May 24, 1945* NUMBER 11

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

THE end of organized resistance in Europe lends fresh impetus to the examination of the problem of fitting the returning veteran back into his job as a civilian. With all due regard for official reminders that the great proportion of the young men in our armed forces are going to be utilized in the war against Japan, mopping up and occupying hostile areas of Europe, and that in any event transport difficulties and other routines will hold up returning veterans for quite a few months, practical business judgment dictates that the present is not too soon for shrewd industrial management to step up its reception program.

IF anything, such programs should already be well under way, because of the need for training supervisory people who are going to be responsible for putting the veterans back to work with the least amount of lost motion or friction. Viewed in this light it is just as well that the first batch of honorable discharges from the armed forces will begin with a comparatively modest trickle, mainly medical discharges. This stream will grow rapidly enough as the Army begins to sift through the large number of liberated American prisoners of war, older men, and, later on, men with large numbers of dependents who will be released as a matter of more strict selection for continuing the war against Japan.

THE opening article in this issue is the product of a member of our own editorial staff, FRANCIS X. WELCH, who has investigated the problem of fitting the returning soldier back into civilian life, not only from the standpoint of legal requirements, but also managerial expediency. He suggests that utility management might well consider "reindoctrination" programs which go beyond strict compliance with the GI Bill of Rights and allied legislation to help the returning veteran.

ONE point which MR. WELCH briefly noted in passing is bound to be heard from repeatedly as the returning veterans join the ranks of utility employees. That is the inevitable and perhaps unconscious difference in attitudes of the civilian employees who stayed on during the war and the men who will come back from the fighting fronts. Right now, of course, civilians can't say enough words of praise for the men and women who answered the call to the colors. They have bought bonds, accepted

LOREN W. EAST

Rate fixing has become definitely confused by the excess profits tax issue.

(SEE PAGE 672)

rationing, donated blood, and responded to the other patriotic demands.

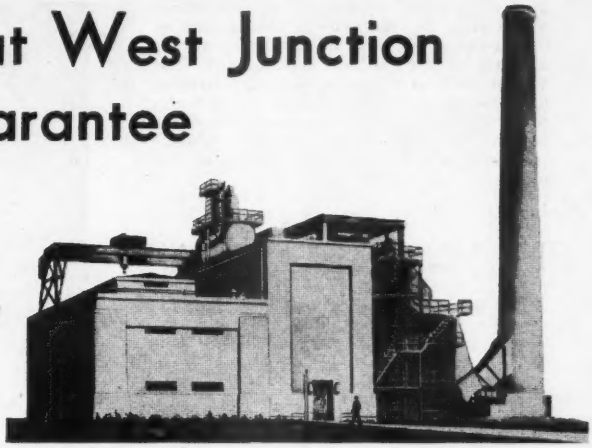
BUT when the last shot is fired and the patriotic stimulus of the grave struggle for our national security has passed into history, it is only realistic to expect little evidences of friction to make their appearance. It was so after the last World War. Maybe some of the oldtimers who were given new responsibilities just at a time when they ordinarily would have retired are not going to bow out too gracefully. Here and there the working wife may not be disposed to relinquish cheerfully the new liberty of personal action which goes along with the war-swollen pay envelope. The teasing by the boys who come back of those who stayed at home for various reasons, however justified, may occasionally grow into grudges at the expense of personnel unity and good fellowship.

IT may seem rather soon even to mention these somewhat unpleasant problems while the notes of victory are still in the air. But common sense tells us that it is not too soon to plan for them. MR. WELCH'S article merely gives us some ideas about what to do about getting the veteran back to work. We hope in the future

Riley Unit at West Junction exceeds guarantee

Actual Efficiency
83.55%

Guaranteed Efficiency
81.9%

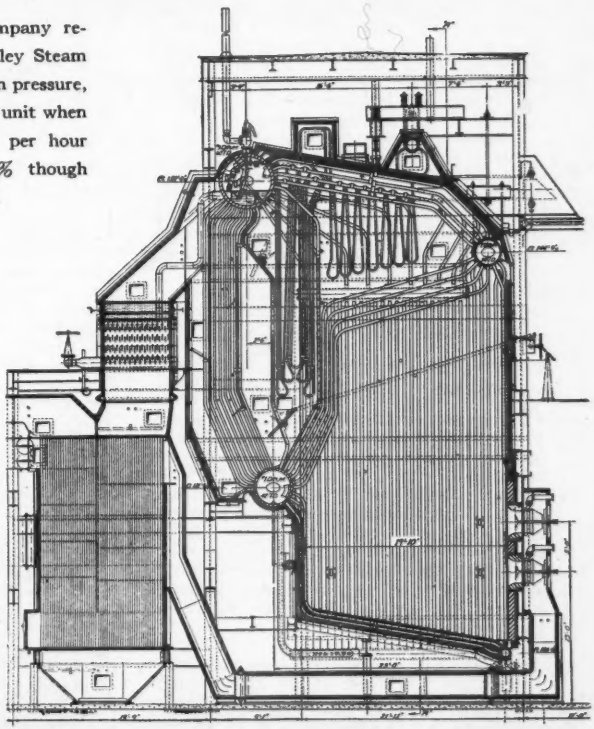


Houston Lighting and Power Company recently installed a 400,000 lbs./hr. Riley Steam Generating Unit, 1000 lbs. drum design pressure, 910°F. total steam temperature. The unit when producing 419,027 pounds of steam per hour operates at an efficiency of 83.55% though guaranteed efficiency was only 81.9%.

TEST DATA
West Junction Station

Lbs. Steam per Hour	419,027 lbs.
Drum Pressure	893 lbs.
Superheater Outlet Steam Temperature	862 lbs. 901°F.
Air Heater Exit Temp.	349°F.
LOSSES—	
Hydrogen in Fuel	10.67%
Moisture in Air	.18%
Dry Chimney Gas	4.64%
Radiation	.96%
Efficiency	83.55%
	100.00%

Houston Lighting and Power Co. operates two additional Riley Units at Gable Street.



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AIR HEATERS • ECONOMIZERS • WATER-COOLED FURNACES
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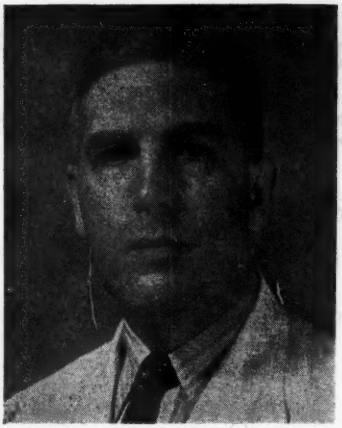
to develop some constructive articles which will analyze the problems of taking care of the veteran and the veteran's civilian co-worker *after* the former has come back to work. The answer isn't so simple as company bowling teams, social picnics, glee clubs, and so forth. Some of these inevitable points of friction are going to take considerable lubrication with the oil of human understanding to prevent growing into really hot trouble areas.

IN our haste to consider the problems of postwar, it would probably be unwise to forget too quickly the lessons which the war has taught us or didn't teach us. There was, for example, the "brown-out." Now that the brown-out has passed into memory, it is perhaps no longer improper to ask some very pertinent questions about it. Just what was the idea of the brown-out anyhow? Was it entirely to save coal? If so, how much coal did it save? Does our experience with the brown-out justify the conclusion that it might be a useful instrument to save coal in the future, if necessary? Is it possible that the brown-out was, in part at least, a weapon of "war psychology" which would not be of practical use in combating a coal shortage during peacetime? If we ever should have to have a brown-out in the future, how would we go about putting one on?

THESE questions suggested the reason for our decision to ask T. N. SANDIFER, Washington business writer, to investigate the War Production Board's experiment with the brown-out from its start and almost to its finish. The result was the article appearing in this issue (beginning page 681) which we feel is a minor historical document on how to put on a brown-out to save coal through curtailment of electric consumption.

ANOTHER war-born utility problem which may give rise to some mischievous repercussions in the postwar period is the idea of reducing utility rates to absorb excess tax liability. Presumably, with the end of the Japanese war, we can reasonably expect some degree of curtailment in the present high rate of corporate excess profits taxes. But this will not by any means be the end of the argument that utility rates which produce excess profits tax liability ought to be reduced accordingly. It is not unlikely that that argument will be given some emphasis.

In this issue we present a timely article emphasizing this phase of the excess profits tax-rate question of the utilities (beginning page 672). It is by a newcomer to these pages, LOREN W. EAST, a utility regulatory and industrial consultant now practicing in Los Angeles. MR. EAST graduated from the University of Southern California as a civil engineer in 1930 (BS) and immediately joined the staff of the California Railroad Commission, engaging in valuation and rate studies.



T. N. SANDIFER

Just how many pounds of coal were saved "in the gloaming" of the brown-out?

(SEE PAGE 681)

In 1937 he was appointed the commission's research engineer, and the following year commission examiner. He resigned from the commission to enter private practice in 1943.

IN this issue we introduce a brand-new department, "Government Utility Happenings" (beginning page 690), in which we propose to cover news developments and factual analysis pertaining to Federal, state, local, and coöperative activity in the public utility field. Admittedly, a "coöperative" is not a unit of government in the same sense as a political subdivision. But inasmuch as our coverage shall have to do almost exclusively with REA coöperatives, we consider them, in a financial sense, subject to government—at least for purposes of classification.

WE do propose, however, to cover in this department all phases of various governmental activities in any branch of public utility operations.

This would include, of course (in addition to electric power), gas, transportation, water, and even — according to some recent agitation—telephone service. The rising importance of the Federal government in the electric power production field is only one of the various reasons which indicate the need for such a specialized department.

THE next number of this magazine will be out June 7th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 1-64, from 58 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ROSCOE POUND
Dean emeritus, Harvard Law School.

"Instead of our fundamental doctrine that government is to be carried on according to law, we are told that what government does is law."

CLINTON DAVIDSON
President, Management Planning, Inc.

"Today's double taxes on corporate earnings properly 'take the profits out of war.' If they are allowed to stay unchanged they will take the prosperity out of peace."

HARLEY L. LUTZ
Professor of public finance, Princeton University.

"The fundamental and sinister change that has occurred in tax theory is a shift from the historic principle of taxation for revenue to taxation as an instrument of social policy."

EDITORIAL STATEMENT
Raleigh Times.

"History may yet rank the TVA as the most important legislative achievement of the immediate prewar years. Its chief rival for that honor would be the Social Security Act."

ARTHUR H. VANDENBERG
U. S. Senator from Michigan.

" . . . if we are to win the war at home as well as abroad, we must pay just as much attention to demobilizing the bureaucrats as we do to demobilizing the Army and the Navy."

N. R. POWLEY
President, Pacific Telephone & Telegraph Company.

"If enough Americans come to the end of the war having a conviction that we all did what we ought to have done to win the war, the future of America will not be in doubt."

GEORGE W. TAYLOR
Chairman, National War Labor Board.

". . . if the nation is going to have a system of industrial relations capable of assuming the burdens which lie ahead, it must develop collective bargaining as an institution functioning in the common interest."

ANNE O'HARE MCCORMICK
Staff member, The New York Times.

"We in America have for the first time in this conflict strained our doing capacity to limits beyond our conception of our power, but we haven't yet even tapped our thinking capacity. How much thinking power have we? And what could we accomplish if we applied our brains as hard and unreservedly to the problems that face us as the war ends, as we apply our mechanical genius, our energy, and our resources to war itself?"

EDITORIAL STATEMENT
The New York Times.

"The main problem arising in reconverting to peacetime production will be time. Just as it took time to prepare our factories and man power for war production, so it will take time to reconvert them."

CLYDE M. REED
U. S. Senator from Kansas.

"The acid test for TVA is going to come after the war when it is determined how much of that vast power production can be utilized by private industry. If a great part of it can be so utilized, well and good."

JAMES A. FARLEY
Former Postmaster General.

"Will our government, after the war, live within its income and foster business growth, or will it take the easy way of deficit financing leading to political regimentation of business and unavoidably to the destruction of the American system of free enterprise?"

J. CLIFFORD FOLGER
President, Investment Bankers Association of America.

"Give the large investor his chance at capital gains, avoid soaking corporations with confiscatory taxes before the money ever gets to the stockholders, help new and little business taxwise, and we will do more than anything else to get venture capital out into the open."

EDITORIAL STATEMENT
Manufacturers Record.

"There is no reason for businessmen to worry about high wages after the war. High wages will benefit everybody—if they are earned. The thing that business should be worrying about is how to train men to earn high wages. Labor should worry about teaching men to want to learn and earn. Government should encourage both or, at least, let them alone."

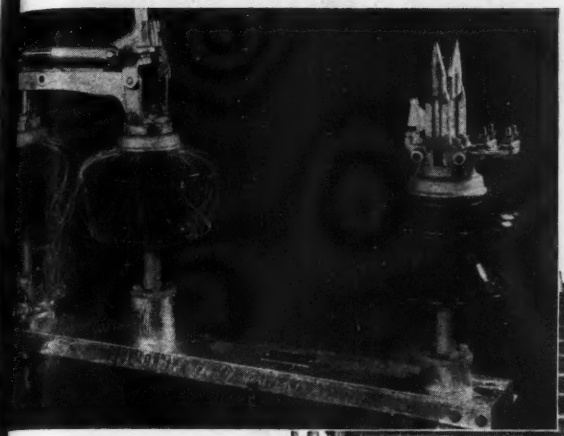
ALLAN SPROUL
President, Federal Reserve Bank of New York.

"If we are to attain . . . such a level of postwar national income as the full-employment estimate of $140,000,000,000 so widely used in current discussions, we shall need to have not only a great increase of private investment but (what is far more important in terms of comparative magnitudes) an expansion of consumption by at least 40 per cent beyond any level previously known in times of peace and substantially above the current (civilian) wartime level, which is the highest in our history."

WILLIAM H. DAVIS
Former chairman, National War Labor Board.

"It is no exaggeration to say that in this social and economic field the day after victory will be a day of greater peril than the day before victory. Our realization of that has become so keen that we are actually inclined to find a factor of safety for our economy in a continuation of the Japanese war beyond victory in Europe, on the theory it would give us an economic interlude—half war and half peace—in which we might learn to make the reconversion from wartime production to civilian production with fewer shocks and at less peril."

R&IE *the Switching Equipment* SPECIALIST



As you seek Quality and Service - remember that R&IE has been a specialist in the problems of Indoor and Outdoor Switching Equipment for over thirty years.

Shown here is a normal production line of Hi-Pressure, Self-Cleaning-Contact Switches, possibly on the way to some War Production center.

The flashover test, shown at the top, is one of the several methods used to check design and performance.

This same production may be serving you some day when peace-time reconstruction calls for a broader application of reliable switching equipment.

R&IE will continue to specialize in the making of this equipment long after the present War-time emergency.

The Load Tests made during development, during production, and after years of service, demonstrate that Hi-Pressure Contact Switches carry their rated load year in and year out under all service conditions

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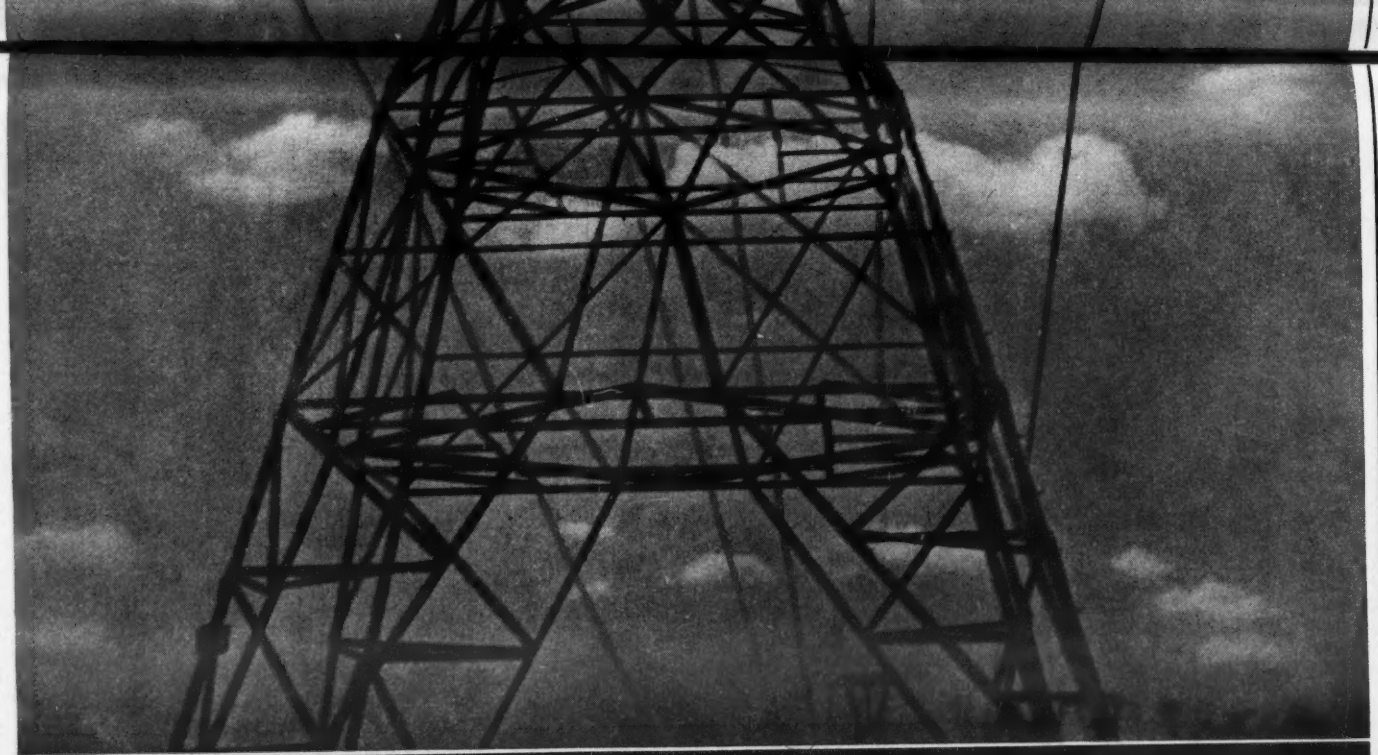
GREENSBURG, PA. . . . In Canada—Eastern Power Devices Ltd., Toronto

Cooperating 100% with the War Effort



BLAW-KNOX TRANSMISSION TOWERS

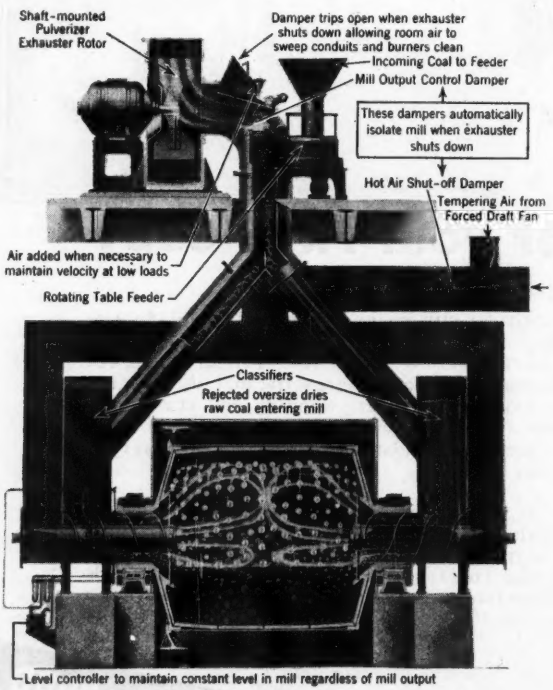
BLAW-KNOX DIVISION OF BLAW-KNOX COMPANY • 2057 FARMERS BANK BLDG., PITTSBURGH, PA.

NEW YORK CHICAGO PHILADELPHIA BIRMINGHAM WASHINGTON

PULVERIZERS

Fuel Storage in Unit Systems

When pulverized fuel was first commercialized, storage systems were provided to insure an ample available supply of pulverized fuel to meet sudden load swings. In unit systems there was considerable lag between the time of change in feed rate to the mill and the change in amount of pulverized fuel available at the burner.



Development of the Foster Wheeler unit system, incorporating the ball mill (Hardinge type) provides a six to eight minute supply of pulverized fuel. This reservoir of prepared fuel is always in the mill ready to meet additional demands of the boiler beyond the rate at which it is being operated. Rate of feed is controlled to keep a constant level of fuel in the mill.

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Easy Cutting and Fitting—can be cut with a saw d shaped with a rasp. Most special shapes can be from standard slabs, reducing inventories.

Minimum of Joints—the large size, compared to brick, reduces number and length of joints, re- ting in thermally more efficient construction.

Economical Bonding—with reduced joint length, eblok requires a minimum of airset cement for nding. (J-M 1626 Cement was especially developed this use.)

Uses—use Fireblok wherever insulating Fire Brick recommended, as for industrial furnaces, flues, stacks, etc. Fireblok is suitable for the lining of doors, for suspended arches, and when tapered, for sprung arches of exceptional stability.

The four types of Johns-Manville Insulating Fireblok (lightweight insulating refractory linings in block form) are suitable for the same temperature ranges as the four J-M Insulating Fire Brick.

J-M—1620 Fireblok for exposed temp. to 1600° F. As backup to 2000° F.

J-M—20 Fireblok for use up to 2000° F. Exposed or backup.

J-M—23 Fireblok for use up to 2300° F. Exposed or backup.

J-M—26 Fireblok for use up to 2600° F. Exposed or backup.

For further information, call or write your nearest J-M office.

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for every temperature—for every service
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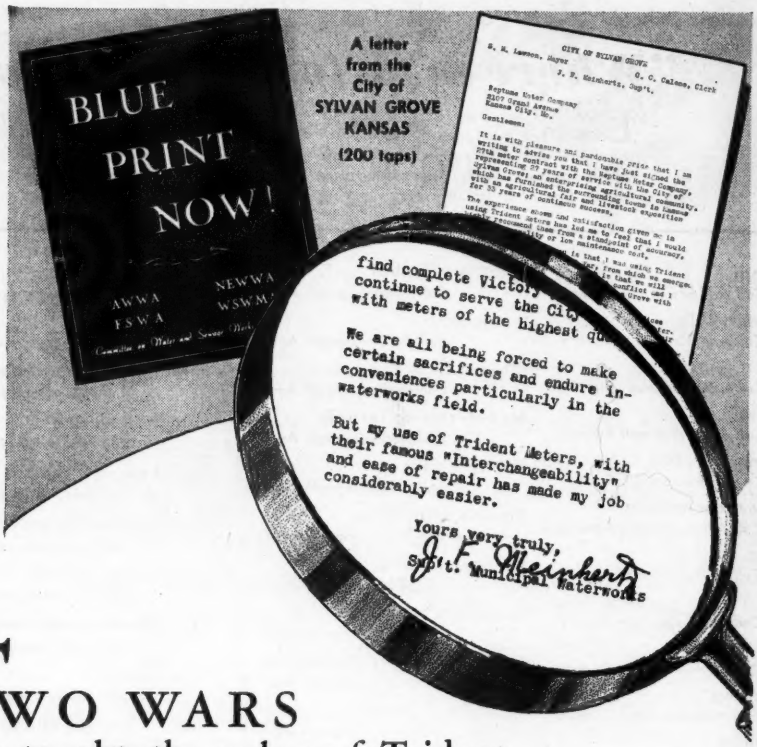
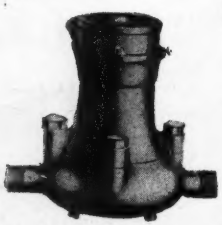


TWO WARS

have taught the value of Trident Water Meters—"their economy, durability, quality and low maintenance cost," to quote this steady buyer of Tridents for over a quarter-century. So blueprint your future water meter buying wisely.



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Investigate Trident Water Meters. Your nearest Trident representative will be glad to give you any facts you may require.

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ARMY (E) NAVY

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Utilities Almanack

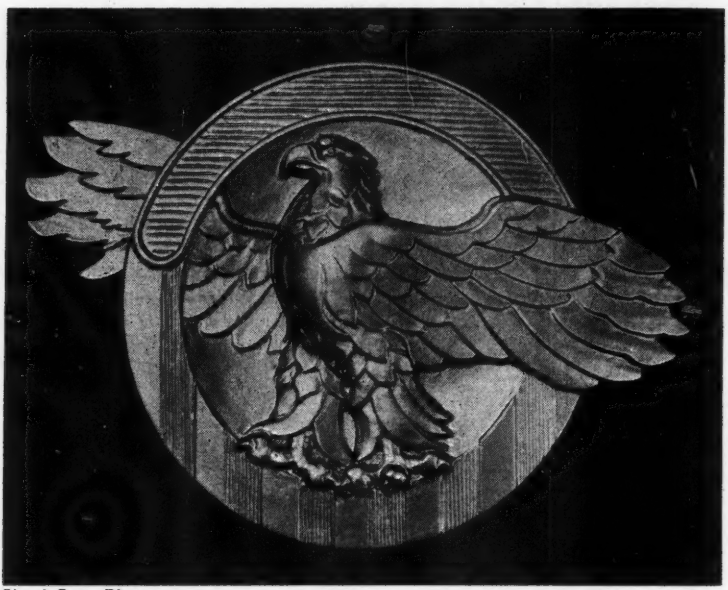
Due to wartime travel restriction, conventions listed are subject to cancellation.

May

24	Th	¶ *Missouri Valley Electric Association, Accounting Conference, concludes meeting, Kansas City, Mo., 1945.*
25	F	¶ *American Water Works Association, New Jersey Section, will hold meeting, June 8, 1945.*
26	Sa	¶ *Institution of Gas Engineers will hold annual meeting, London, England, June 12–14, 1945.*
27	S	¶ *Central Western Shippers Advisory Board will hold meeting, Omaha, Neb., June 14, 1945.*
28	M	¶ *Interstate Oil Compact Commission will hold quarterly meeting, Oklahoma City, Okla., June 15, 16, 1945.*
29	Tu	¶ *American Society of Mechanical Engineers will hold semiannual meeting, Chicago, Ill., June 18–20, 1945.*
30	W	¶ *Canadian Gas Association will hold annual conference, Murray Bay, Quebec, June 19–22, 1945.*
31	Th	¶ *National Rural Electric Coöperative Association will hold meeting of national board of directors, Chicago, Ill., July 17, 18, 1945.*

June

1	F	¶ *Illinois Power Company holds annual stockholders meeting, Monticello, Ill., 1945.*
2	Sa	¶ *American Water Works Association, Michigan Section, will hold meeting, Flint, Mich., Sept. 12, 13, 1945.*
3	S	¶ *American Water Works Association, Southwest Section, will hold meeting, Oct. 15–17, 1945.*
4	M	¶ *American Water Works Association, North Carolina Section, will hold meeting, Charlotte, N. C., Nov. 5–7, 1945.*
5	Tu	¶ *American Water Works Association, New Jersey Section, will hold meeting, Atlantic City, N. J., Nov. 8–10, 1945.*
6	W	¶ *American Gas Association starts local domestic gas research conference, Chicago, Ill., 1945.*



Signal Corps Photo

Honorable Service Button

More than a million veterans of the armed forces are now entitled to wear the Honorable Service Button which is issued to each individual on his discharge from the Army, Navy, Marine Corps, and Coast Guard.

While this button should entitle its wearer to the respect of Americans everywhere, the War Department is frequently informed that the public does not generally recognize the meaning of the emblem. Veterans with long combat service overseas, now returned to civilian life, have the unpleasant experience of being challenged for their failure to appear in uniform. Their badge of honorable service has not been recognized.

Public Utilities
FORTNIGHTLY

VOL. XXXV; NO. 11 MAY 24, 1945

When the Veteran Comes Back To His Utility Job

The utility companies with their exceptionally stabilized character of work have a unique opportunity for helping their returned soldiers help themselves in solving their postwar employment problems.

BY FRANCIS X. WELCH

IT was Will Rogers who once said he would "rather have three bucks than three cheers." When the thousands of men and women now on leave with the armed forces from their jobs in the utility industry come back, they are going to feel pretty much the same way about it, according to all indications. Coming-home parties, welcome-back lunches, and pretty speeches are all very nice. We may be sure that smart utility management is going to see that this end of the business is done up in proper style. But when the last speech has been made, the last toast drunk, the last bouquet thrown, and the last note of festive music has died away, the returning veterans will want to see something really on the line beside overstrict compliance with what he is legally entitled to under the GI Bill of Rights, and allied legislation.[1]

[1] Reëmployment rights of veterans are variously provided in the following public laws: Selective Service Act of 1940 (as extended 1941), Army Reserve and Retirement Service Law of 1940; Merchant Marine Service Act of 1943; the "WAC" Act of 1943; the GI Bill of Rights, 1944. Selective Service policies on reëmployment are set forth in a special local board memorandum, 190(a), which interprets specific questions arising under § 8 of the Selective Service Act.

It's a tough problem for management—probably one of the most challenging in the industry's entire history of personnel relations. A host of questions arise at the very mention of the phrase "returning veteran." Leaving the statutory requirements to one side for the moment, utility management in common with other industrial management will find itself up against such puzzlers as these:

1. MAYBE *the returning veteran doesn't want his old job back.* Maybe he has grown out of it. The smart young ex-shipping clerk, who has graduated into a crack pilot with a couple of bars on his shoulder, probably is not apt to be interested in returning to his old responsibility as maestro of the shipping platform. What are you going to do about that, Mr. Manager? The law says your responsibility ends with giving Captain Joe back his old job, or one of equal status plus such seniority treatment as he would have obtained if he had remained in your employ. But does your responsibility really end there? Captain Joe probably wouldn't think so.

2. MAYBE *the old job isn't there any more.* Techniques have changed in a number of utility operations, which is only reasonable to expect over a period of three or four years. Maybe Captain Joe or GI Joe wouldn't know the first thing about picking up the job which has now succeeded his old job. Maybe he wouldn't be qualified for it for various reasons.

3. JOE *is going to have to be "reindoctrinated"* in a number of ways to fit him back into civilian employment. And the process will take all the tact management can muster to avoid offending Joe who is likely to be quite sensitive anyhow. He may be actually timid about getting back into the swing of things. He will have to trade his tough "top sergeant bark" for the "customer-is-always-right" attitude. He will have to take care of company equipment a lot differently from the way he used to burn out the enemy with Uncle Sam's best war matériel. These changes must be made for Joe's own good—to fit him into any sort of proper civilian life. But he probably would not appreciate it, if the need for reëducation were put up to him in just that way.

4. JOE *will have to be sold on his job,* the future it holds for him, and his fellow workers. Joe has seen some pretty dazzling action in all corners of the world. Like as not, he has been exposed to some propaganda here and there not overcomplimentary to management or the need for continuing private enterprise in the utility business.

The old plant is likely to seem pretty tame after the novelty of welcome-home parties wears off. It is going to take a first-rate job of glamor propaganda to convince Joe that he is better off working with his old outfit than trying to crash the more sensational lines of golden promise now getting so much free publicity, such as commercial aircraft, electronics, plastics, and so forth.

Failure to convince Joe of this would mean not only that the utility industry would lose its fair share of the best and brightest of the returning veterans, but it would eventually mean a disillu-

sioned Joe when he finds himself in the terrific competition which will surely come in postwar years when those so-called glamor industries become overcrowded and even begin to lay off some of the people now working in them.

5. THE *returning veteran will look to management* for more than strictly measured compliance with the GI Bill of Rights and other laws. He will look to management for leadership, for guidance, personal interest in his own welfare. Failure to meet these expectations will lose, for the particular management responsible, an opportunity for gaining loyalty which may never come again. Living up to these expectations, on the other hand, will put management in so solidly with returning veterans that future personnel relations will not only be exemplary of themselves, but in turn flow over into flourishing public relations.

NOW let us take a look briefly at the GI Bill of Rights. Not every veteran is strictly entitled to reëmployment in his old organization. The returning veteran is entitled to his old job or a job of like seniority, status, and pay under the following specific conditions:

a. If he or she has been *honorably discharged* from the Army, Navy, Marine Corps, Coast Guard, and corresponding female services.

b. If application for such reinstalment is made within ninety days of either mustering out or termination of hospitalization.

c. If the veteran has been a *permanent* employee and if the employer's operations have remained so unchanged as not to make such reëmployment "impossible or unreasonable."

d. If the returning veteran is still able to perform either the duties formerly performed or comparable duties.

THERE are a number of variations of "discharge" from the various branches of service. A safe guide as to whether the returning veteran has the right under law to reëmployment by reason of the nature of his discharge is the color of the discharge papers. If they are white, the veteran is entitled to reëmployment (with the sole exception of former Marine Corps men who may have a discharge under other conditions than "honorable" printed on white paper—forms 385a and 385c). If the discharge papers are either yellow or blue, however (regardless of the branch of service issuing them), the holder is not entitled as a matter of right to reëmployment.

¶ "A SAFE *guide as to whether the returning veteran has the right under law to reëmployment by reason of the nature of his discharge is the color of the discharge papers. If they are white, the veteran is entitled to reëmployment (with the sole exception of former Marine Corps men who may have a discharge under other conditions than 'honorable' printed on white paper—forms 385a and 385c). If the discharge papers are either yellow or blue . . . the holder is not entitled as a matter of right to reëmployment.*"

THE Research Institute of America has recently published an excellent comprehensive analysis of the various questions arising, or which might conceivably arise, in trying to interpret these general requirements of laws affecting veteran reëmployment.[2] These include such questions as: What constitutes "employment" (whether the independent contractor would qualify)? What constitutes "temporary"? What obligation obtains where several employees have successively left for the armed forces after occupying the same job? Under what circumstances may reëmployment rights be waived by agreement? Under what circumstances is the employer relieved of his obligation to rehire the veteran because of changed operating conditions (such as installing utility facilities in military camps under types of construction which no longer will be used after the war)?

But these questions are confined to what the former employer must do under the law. Utility management will want to be familiar with those requirements, of course, because failure to comply—even through inadvertence or honest mistake of law—exposes the employer to heavy penalties, including damage suits for back pay as of the day when a specific veteran should have been rehired. (This was decided by a Federal District Court of Kentucky in Hall *v.* Union Light, Heat & Power Co. February 21, 1944.)[3]

It is also interesting to note that the usual Federal statutory pattern of discrimination and partiality against business-managed utilities, as compared with government-owned utilities, obtains even in these rehiring-of-veterans provisions. Specifically, the GI Bill of Rights and other laws do not apply to state, county, or municipal governments. They have no legal duty to rehire ex-employees. It is only fair to note, however, that Selective Service has been urging local bodies to reserve positions for veterans and give them every possible consideration.[4] A good many municipal administrations have done so, following the example of Mayor LaGuardia of our largest city.

BUT merely glancing back over the conditions, enumerated above, to reëmployment of veterans shows the inadequacy of any reëmployment policy based upon strict compliance with statutory requirements. For example, the law says you do not have to rehire a former employee if he is no longer able to fill the job. That means that a former bus driver whose sight or hearing has become affected by a casualty experience has no right to his old job as a bus driver. But will the really smart transportation company stand on this? The very question suggests the sensible answer. It will look around the plant and see if there is a job the veteran with impaired eyesight or hearing can perform satisfactorily.

Admittedly, there is a point beyond which a utility cannot go in filling up its postwar personnel ranks with em-

[2] See "Rehiring Your Company's Veterans," Analysis 38, published by Research Institute of America, 292 Madison Avenue, New York 17, New York, February, 1945.

[3] 53 F Supp 817.

[4] In his very first executive order after assuming office, President Harry S. Truman authorized the U. S. Civil Service Commission to certify for probationary service leading to permanent status persons who entered the armed forces of the U. S. between May 1, 1940, and March 16, 1942, and whose names appeared on Civil Service list, of eligibles at any time between those dates.

Educating Returning Veterans

". . . public utilities, with their exceptionally stabilized character of employment (indicated by the low turnover rate), have a unique opportunity for helping the veteran help himself along an educational line. Educating returning veterans would naturally fall under two classifications: (1) a retraining program to fit him for his old job or a new job; (2) a program of general education to enable the veteran to improve his prospects, living standards, and mentality."

ployees who are too obviously or too seriously handicapped. Proportionate casualties of the American armed forces today do not indicate that, on the average, there will be such a serious problem that it cannot be solved in most cases with the use of a little ingenuity, tact, and understanding. It is hard to conceive that a utility's public relations would suffer merely because a former lineman has been transferred to "complaint adjustments" because of a stiff leg. If the Purple Heart is a badge of honor, then we must pay it homage in deed as well as with praise.

What company would really want to stand on the fact that certain operating techniques had changed, as a reason for refusing to give a veteran back his job? Technically, the job may no longer exist and legally the company may have no obligation to rehire, although that would depend on factual circumstances in each case. Finding a place for the returning veteran in such a situation would really be following a policy that could not fail to impress company employees and establish a substantial credit reserve of loyalty which the company may well need in the future.

THE same with the other conditions. Should not the utility consider finding a job for the former "temporary" employee, and perhaps even the lad from the conscientious objector's camp, who, of course, has no legal right to reëmployment at all although he performed work under government supervision and contributed indirectly to the war effort?

Giving more than the legal pound of flesh to these who find themselves in a position of not having the right to "demand" anything at all, is one of the opportunities for establishing solid employee relations in the process of rehiring the returning veterans.

AND what about special benefits to which utility employees on leave with the armed forces may not be strictly entitled under the law? The Bell telephone system has established a noteworthy precedent along this line. Consider the following passage from a letter which went out to every man and woman in the armed forces who formerly worked for any of the associated companies of the Bell telephone system:

> FIRST, you will receive full credit for Bell system service under the benefit and pension plan for the entire period of your leave.
>
> SECOND, your rate of pay when you return to work will be the same as if you had worked continuously with the company in the job you held when you went on leave.
>
> This means that your new rate of pay will include all increases which you would have received if you had stayed at work in that job.

Of course, many of these benefits the telephone company would have to allow, anyhow, under the law, such as restoring seniority rights and the allowance of other systematic benefits (both in pay and pension rights) which had been set up and in operation before the veteran left for the service. Wage adjustments for the same job, approved during his absence by the War Labor Board, would also be due the returning veteran.

But the returning veteran is not entitled to retroactive benefits and pension funds set up during his absence. The Bell system announcement would seem to waive any question on that point. That such concessions redound to better public relations of the operating utilities involved is seen from the following passage from an editorial in the San Francisco *Call-Bulletin*, which commented at length on the Bell system letter excerpted above:

> It is not hard to imagine what a letter like that means to men fighting their hearts out in Germany, or on the Pacific islands, or on the sea, or in the air above or the depths below it.
>
> This is not just a promise of jobs back because the government or the law says the fighting men have a right to them.
>
> It is a welcome back to men and women who are wanted back.
>
> "You may rest assured that a real welcome awaits you and we look forward with great pleasure to the time when you are back in the family circle," says the letter. "We want and need your help in the great work which we will have to do after the war."
>
> A lot of good feeling as well as good sense went into that letter, and it would be a pleasure and a thrill to see the faces of the boys when they read it.

THE Bell system example comes to mind readily because it is such a large single organization, occupying so much of the operating telephone industry field. But other utility organizations in the less consolidated fields of public service, such as gas and electricity, have taken equally advanced positions in the matter. Typical is the plan worked out by Public Service Corporation of New Jersey, which will restore not only all benefits to the returning veterans but features an educational program that should not only help to fit the returning veteran back into his civilian job but immeasurably improve his chances for advancement.

In this respect, public utilities, with their exceptionally stabilized character of employment (indicated by the low turnover rate), have a unique opportunity for helping the veteran help himself along an educational line. Educating returning veterans would naturally fall under two classifications: (1) a retraining program to fit him for his old job or a new job; (2) a program of general education to enable the veteran to improve his prospects, living standards, and mentality.

The first of these is simply good business. The approach to fitting the returning veteran into his civilian job involves matters of special consideration, discussed in an earlier article in this publication.[5] Particular utility managements will naturally want to develop their own programs for "reindoctrination," which will take into consideration the peculiarities of their own plant organizations. But there are general considerations to be kept in mind, such as helping the "battle-fatigued" veteran to come back to a normal civilian psychology, making allowance for other changes in the psychological make-up of the veterans, traceable to their combat or other experience; bridging the gap between returning veterans and civilian employees who have stayed on the job and may be slightly resentful or impatient with the returning veteran who has grown "rusty."

All these problems are part of the delicate task of reindoctrination which must largely be placed in the hands of foremen and other supervisory personnel.

THE government is willing to help retrain veterans where an employer's own plant lacks sufficient facilities to develop a program of its own. Information may be obtained by writing to the War Manpower Commission headquarters at 1778 Pennsylvania Avenue, N. W., Washington, D. C., or to any regional agency.

The second classification—general education aid—is not in any sense an obligation of the employer under the law. It is a partial obligation of the government. Any veteran who was under twenty-five years of age at the time of his induction has the option of going to school at the government's expense when he comes home. The government will allow such veterans up to $500 a year for tuition, plus $50 a month maintenance, or $75 a month if he has dependents.

Obviously, not all veterans, even those under twenty-five at the time of induction, will be qualified or will even want to take advantage of this educational opportunity at government expense. A great many will not be qualified scholastically to do so. But there may be others who are qualified to go on to higher education but unable to do so because of family obligations which require that they get back into

¶ *". . . not all veterans, even those under twenty-five at the time of induction, will be qualified or will even want to take advantage of . . . educational opportunity at government expense. A great many will not be qualified scholastically to do so. But there may be others who are qualified to go on to higher education but unable to do so because of family obligations which require that they get back into full-time employment as soon as possible. Where this occurs among former utility employees, there may be an opportunity for management to coöperate."*

[5] "Fitting Future Veterans into Postwar Jobs," by Guy E. Trulock, PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXIV, p. 347, Sept. 14, 1944.

full-time employment as soon as possible. Where this occurs among former utility employees, there may be an opportunity for management to coöperate.

Let us go back to our early example of the former shipping clerk who comes back as Captain Joe. He does not want to go back to the shipping department. During the war years he has accumulated a wife and a couple of babies, or perhaps some collateral dependents. Captain Joe had a good high school education and maybe a year or two of college that would qualify him for preliminary entrance to professional schools. It may be possible for him to attend evening sessions in law or accounting or foreign service.

LET us assume your Captain Joe would like to be a lawyer and is willing to work hard. Why not find him a place in the general counsel's office where he can knock off at 5 o'clock and go to evening law school for three or four years? Chances are that if such a coördinated program were worked out for Captain Joe he would meanwhile become so familiar with the company's legal problems as to be a valuable attorney by the time he had passed his bar examinations—one which the utility company would be glad to pick up as a seasoned legal aide.

Other utility employees may simply want to round out their educational background through part-time extension courses, without any special professional ambitions—but merely because their education was interrupted by circumstances beyond their control. Stretching a point to let such a former employee go on to complete a high school course or even get an AB or BS can pay dividends in future employee relations all out of proportion to the slight concessions involved.

Of course, a utility company as such could have little justifiable interest in educating doctors or dentists or others who want training that would eventually lead them to leave the employment of the company. But if an employee's educational ambitions, otherwise justified by a qualified background, *can* be made to coincide with some sort of a future within the framework of the company's employment, it is not unreasonable for utility management to examine at least what can be done in each particular case.

FINALLY, utility management will want to have a timetable for preparations to receive the returning veteran. Indeed, it is almost too late for some phases of this over-all program for special training of foremen and other supervisory people who, in turn, have to train the returning veterans. This should have been started weeks ago and, if not, should be started immediately. Other general steps to be taken, in the approximate order of their chronology, are as follows:

(a) *Checking the number of returning veterans.* This can be done primarily from the company's employment records, modified by data on individual cases, to indicate the total number entitled to return, the total number who want to return, and the total number requiring special consideration, such as casualties, those whose jobs have been revised, have been superseded, and so forth.

(b) *Checking the returning veteran's occupational possibilities.* This has to be done either by questionnaire or interview, or a probable combination of both. Some company managements

may not even want to give up when the veteran entitled to return indicates that he does not desire to do so. They will want to find out why. Maybe the trouble is something the company can fix up. Maybe it is the case of an especially gifted employee who has fallen under the lure of some other industry where he would not make out as well. Under this heading also must come the examination of the veteran's personal desires about education, permanent employment, whether he is married or intends to get married, and if so whether he is satisfied to settle down in one community or might prefer to be transferred to another community within the company's service area. Information on the number and status of dependents would come under this heading.

(c) *Job analysis for the returning veteran.* In the case of the handicapped veteran, whether the trouble is psychological or physical, it is clear that a special arrangement will have to be made to find out just what the veteran can do. This must be checked against an analysis of the jobs available. The supervisor of the management's overall reëmployment department (and there should be one already appointed, preferably a veteran) will probably want to set up his own technique for medical examination. Aside from the handicapped veteran, a job analysis is naturally a part of the tool kit used by any well-established personnel director along with the usual aptitude tests and so forth. For reasons already discussed, special application of these traditional implements will have to be worked out to fit the needs of the returning veterans.

(d) *Appellate supervision of veteran rehiring* is a necessary subsequent development to give the veterans confidence that top management is willing to review any decisions made by the ordinary personnel department. These would include differences arising about seniority or pension rights, whether the job given the returning veteran is one of "equal prestige" in cases where the old job is no longer available. And, of course, there is always the handling of requests for special concessions such as extension of the 90-day limit fixed by law, during which the returning veteran must apply for reëmployment. Labor unions, both on behalf of their own members and even nonmembers, are likely to raise such questions and wise management will, in shops where union organization is an accomplished fact, consult with union leaders on the handling of any request for appeal and review by the dissatisfied employee. Some managements have even gone to the extent of seeking employee and labor union advice in the drafting of questionnaires and other details.

(e) *Estimate of postwar employment need.* The returning veteran will feel a lot more satisfied returning to his old employment if management will take the trouble to outline for him, more or less, just "what's on the menu" for future expansion of company activities. He would like to be assured, of course, that he is going to come in for his share of promotions and opportunities when the company gets around to tackling that proposed postwar construction or operational program. It is not against the rules of the business game to tip your cards to those who expect to be playing on your side. It might make them a great deal more ambitious.

Bang, Bang, Bang Went the Trolley

PASSENGERS stood on street corners of a Cleveland, Ohio, trolley line recently and swore mildly as an empty streetcar raced by without stopping, even for red lights. The car had been commandeered by three gunmen, who robbed the motorman and conductor and forced them to run the car at full speed for sixty blocks before calling a halt to the wild ride. The thugs escaped.

Bearing of Excess Profits Tax On Utility Rates

Analysis by the author of the effect of the Federal tax on utility net earnings, leading him to the conclusion that the disallowance of the tax should not be used to fix the charges of regulated utilities.

By LOREN W. EAST

DURING the last twelve months a number of regulatory commissions instituted formal rate proceedings in an effort to reduce utility rates through the elimination of the so-called "war taxes" and particularly the disallowance of the Federal excess profits tax as an operation expense for rate-fixing purposes.

This action was prompted from the relationship existing between the tax rate and the net revenue retained by the utility—the argument usually being that 85½ cents of the dollar represented Federal excess profits tax and only 14½ cents remained with the utility. Little or no effort was apparently made to determine the essential facts within the excess profits tax law which made it possible for a regulated public utility to create an excess profits tax liability, in substantial amounts without increasing the utility's earnings.

While in a number of instances the excess profits tax was singled out by regulatory commissions as questionable, one Pacific coast state commission, on its own motion, issued a "show cause" order directing a major utility under its jurisdiction to show cause

> why interim rates for gas should not be made effective corresponding to a gross revenue reduction that would result by the elimination in whole or in part from operating expenses Federal war taxes.
>
> For the purposes of this proceeding, Federal war taxes shall be construed to be all Federal excess profits taxes and other Federal income taxes, which are at rates in excess of the highest rate prevailing under the Internal Revenue Laws applicable to the years 1936 to 1939 inclusive.

Without argument it is conceded such a show-cause order scrapes the bottom of the barrel in so far as reducing, to a possible maximum, rates and earnings of the utility, because during the period 1936 to 1939 the Federal corporation income tax was at a rate of approximately 18 per cent. Today the corporation income tax rate,

24 per cent plus a surtax rate of 16 per cent, results in the 40 per cent tax rate for normal income tax and surtax. In addition to the normal tax and surtax all earnings above a specific amount are taxed at the rate of 95 per cent for the Federal excess profits tax; this tax being subject to a postwar credit of 10 per cent resulting in an effective Federal excess profits tax rate of 85.5 per cent.

The purpose of this article is to discuss the application of a regulatory theory designed to eliminate the Federal excess profits tax and, through examples, to show that the Federal excess profits tax is not a measure of excess earnings of the utility or a method to be used for determining fair and reasonable rates for the utility.

Reduced Earnings Resulting from Increased Normal Income Tax And Surtax

It may be assumed for the utility corporation not subject to an excess profits tax that the increase in Federal taxes since 1939 is the result of applying the present tax rate of 40 per cent instead of a rate of approximately 18 per cent. The effect of this increase in Federal taxes has been substantially to lower the earnings of the utility corporation before creating an excess profits tax liability.

In considering the effect of the present normal income tax and surtax rates upon net earnings it is important to understand that the tax rate of 40 per cent is applicable to all net taxable income not subject to the excess profits tax. In other words, generally speaking, all net taxable income equal to or less than the excess profits tax credit is taxed at a rate of 40 per cent, any net taxable income in excess of the excess profits credit being taxed at the excess profits tax rate of 95 per cent less the postwar credit.

To illustrate this principle let it be assumed the average net taxable income of the utility was $2,650,000 for the 4-year period 1936 to 1939, inclusive. This is a practical assumption to be made in order to show the effect of all Federal taxes on income in the examples to follow.

The effect of Federal taxes on earnings requires three computations, one being when the tax rate was 18 per cent; the other two computations for the purpose of showing current tax rates.

Net Taxable Income (4-year average)	$2,650,000
Federal Income Taxes at 18%	477,000
Net Income after Taxes	$2,173,000
Rate of Return on $36,217,000 Rate Base	6.0%

In considering the second calculation, it will be assumed the net taxable income is equivalent to the excess profits credit of $2,527,500 instead of $2,650,000 as used above. The difference of $122,500 results from the application of the excess profits tax law as explained later in another example. The company in this instance would retain only $17,762 of the $122,500 after the excess profits tax.

Net Taxable Income	$2,527,500
Federal Income Taxes at 40%	1,011,000
Net Income after Taxes	$1,516,500
Rate of Return on $36,217,000 Rate Base	4.19%

In order to show the full effect of Federal taxes on identical net taxable income of $2,650,000, consideration must be given to the excess profits tax. The calculation for net income after all

Federal taxes would be as outlined below.

The principle developed here relative to current Federal taxes shows a substantial reduction in earnings from conditions which prevailed during the period 1936 to 1939. In the above examples it will be seen that a utility which formerly earned a 6.0 per cent rate of return will have its earnings reduced to approximately 4.2 per cent.

It must be remembered that the excess profits tax liability for the utility used in this article does not begin at a rate of return of 6.0 per cent formerly earned, but at a rate of return of only 4.2 per cent. This reduction in earnings is not only true for the examples as used here but it is true for all utilities using the average earning method for determining the excess profits credit. All companies will experience a reduction in net income before they are liable for an excess profits tax. This is an extremely important and essential fact inherent in the present income tax laws and the application of this principle has not been clearly understood by many regulatory commissions.

Certainly any regulatory rate-making policy geared to a principle of disallowing the so-called "Federal war taxes" can only result in unreasonable rate reductions which endanger the ability of the utility to survive the post-war period.

The above examples illustrated the effect of increased normal income tax and surtax rates on earnings in comparison with former tax rates. With respect to the Federal excess profits tax and its application to the corporation's earnings, new and complicated principles are involved, the ultimate effect of which requires a searching analysis before the unreasonableness of the principles of their tax are disclosed. Fortunately these principles may be quite clearly illustrated through the use of examples.

In the first place a simple statement relative to the excess profits tax would be that this tax is imposed on the corporation's earnings over and above a stated amount. When the earnings do not exceed the excess profits credit there is no tax; when they do exceed the amount of this credit a tax at the rate of 95 per cent is applicable. However, contrary to popular opinion, this tax is not always the result of inflated war revenues, as will be shown.

Without reviewing the technical considerations necessary to determine the excess profits credit for a corporation, it may be stated that this credit is determined either on the basis of the average income method or the invested capital method and the taxpayer is per-

Net Taxable Income		$2,650,000
Federal Excess Profits Tax (85.5%)	$104,738	
Federal Income Tax and Surtax (40%)	1,011,000	
Total Federal Taxes		1,115,738
Net Income after Taxes		$1,534,262
Rate of Return on $36,217,000 Rate Base		4.24%

mitted to select the method which results in the least amount of tax.

In the case of a regulated utility the amount of the invested capital used to determine the excess profits credit for the utility bears no relationship to the rate base used by regulatory commissions to test the reasonableness of the earnings and it is erroneous to assume there is a means whereby the amount of invested capital determined for tax purposes may be compared with the rate base. Most of the larger utilities, however, cannot use the invested capital method due to the technical considerations which must be given to the acquired companies and the mergers in the past; so utilities, generally speaking, are in effect forced to use the average earning method.

The average earning method, sometimes referred to as the average base period income method, for determining the excess profits credit adjusts the net taxable income as reported for the 4-year period 1936 to 1939, inclusive. After determining the average base period income the excess profits credit is computed by taking 95 per cent of this average figure. Other adjustments are required for capital additions or reductions made to the system since December 31, 1939, in order to bring the excess profits credit down to date of the taxable year which is under consideration.

THE average base period income method will be used for determining the excess profits tax throughout this article.

Conclusions reached will not be applicable to the utility computing the excess profits tax on the invested capital basis.

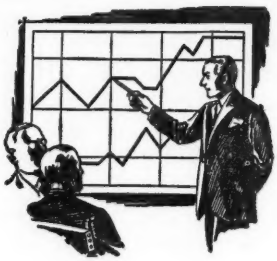
Using 95 Per Cent Instead of 100 Per Cent of the Average Base Period Income Results in an Excess Profits Tax

IT will be recalled certain regulatory commissions urged rate reduction in order to eliminate the excess profits tax regardless of the method used by the utility for the determination of the excess profits credit.

The following example assumes there was no change in revenue or expenses of the utility in the current year from the average condition which prevailed during the base period 1936 to 1939 inclusive, yet an excess profits tax liability has been created; consequently the regulatory commission would require a rate reduction.

The average base period income method requires the use of the net income for the period 1936 to 1939, inclusive. The natural assumption must be that the regulatory commission reviewed the earnings of the utility during this 4-year period and either approved the then-existing earnings or, through commission action, required the rates to be changed which would have modified the utility's earnings; otherwise if rates were not reasonable during this 4-year period the only alternative for the regulatory commission is to declare that it did not function and assume its full responsibility to the state for being derelict of duty. It is assumed in the example the commission functioned properly during the base period and the utility's earnings were maintained at a reasonable level.

Let it be assumed, for example, an analysis of the average base period income disclosed an average earnings for the 4-year period of $2,650,000. Therefore, to determine the ex-



Excess Profits Tax

"THE name selected for this tax was extremely unfortunate for the public utility industry. The name excess profits tax has been misunderstood by many public officials from coast to coast. One city official during a formal hearing urged the elimination of the excess profits tax through substantial rate reduction because of 'the dislike of seeing 14.5 per cent of these excess earnings stick to the fingers of the utilities.'"

cess profits credit, 95 per cent of the 4-year average is used which is equal to $2,517,500 or a difference of $132,500. The utility would then compute its excess profits tax (see table at top of page 677), assuming no growth had occurred; that is, operating revenues and expenses in the tax year identical with those in the 4-year average.

In order for the regulatory commission to eliminate the excess profits tax from the present earnings of the utility, it would be necessary to decrease the rates by $122,500 and this reduction would have to be made in earnings previously considered reasonable by the commission for the base period years.

A reduction of $122,500 in this instance results from an excess profits tax simply because 95 per cent of the 4-year average income is required by the tax law to be used instead of 100 per cent of the average income.

Should a rate reduction of $122,500 be capitalized at 6.0 per cent it will be seen that the regulatory commission has in effect denied an earning on $2,000,000 of the company's rate base because of a tax computation.

A restatement of the example is simply this: The excess profits tax law has defined the method to be used for determining the excess profits credit; this credit is 5 per cent less than the average income for the base period. Consequently when all revenue and expense items for the current year are identical to those items experienced in the base period, an excess profits tax will be assessed against the corporation. Therefore any rate adjustment designed to eliminate this tax will in effect be denying an earning on a portion of the property formerly held to be used and useful in the service to the public.

Excess Profits Net Income (current tax year)		$2,650,000
Less: Specific Exemption	$10,000	
Less: Excess Profits Credit	2,517,500	2,527,500
Adjusted Excess Profits Net Income		$122,500
Excess Profits Tax at 95%		116,375
Postwar Credit of 10%		11,637
Net Excess Profits Tax		$104,738

Reduction in Depreciation Allowance For Tax Purposes Results in an Excess Profits Tax

THE depreciation allowance for Federal income tax purposes as determined from periodic audits made by the Bureau of Internal Revenue is independent of the amount of depreciation considered or used by a regulatory commission for rate-fixing purposes; therefore any change made in depreciation by the Bureau of Internal Revenue changes only the net taxable income of the corporation and does not alter the net revenue for rate-fixing purposes.

During the current taxable year under consideration let it be assumed the Bureau of Internal Revenue prepared a new audit and lowered the composite rate for depreciation from 3.50 per cent to 2.75 per cent, a reduction of 0.75 per cent. Now, if the depreciable capital remains constant at $30,000,000 before and after the audit, the net taxable income would automatically be increased as a result of less depreciation being allowed for tax purposes.

$30,000,000 at 3.50%	$1,050,000
$30,000,000 at 2.75%	825,000
Difference	$225,000

In our original example we assumed an excess profits tax liability had been created and rates adjusted to eliminate the tax; consequently in this example the $225,000 increase in net taxable income resulting from the change in the depreciation allowance is subject to the excess profits tax at the rate of 95 per cent less the postwar credit of 10.0 per cent.

IT is apparent, then, the regulatory commission in its new rate-fixing policy will further reduce the utility's earnings by $225,000.

This sum, which is capitalized at 6.0 per cent, would be equivalent to denying earnings on $3,750,000 because of a tax audit made by the Bureau of Internal Revenue.

So far using only two examples, the rate reductions which would be accumulated against this utility for the elimination of the excess profits tax are as shown below.

Reduction Resulting From	*Rate Reduction*	*Equivalent Capitalization*
1—95% of base period average income	$122,500	$2,000,000
2—Depreciation for tax purposes	225,000	3,750,000
	$347,500	$5,750,000

In the above examples it was assumed no change had occurred in operating revenues and expenses. The next examples assume there has been an expansion of the facilities and new business connected resulting in an increased net income before Federal taxes on income. Two cases will be cited to show the loss of earning on the new invested capital dedicated to public use.

Loss of Earnings on Reinvested Depreciation Reserve

LET it be assumed the utility uses for rate purposes the 6.0 per cent sinking-fund method for depreciation accounting, the depreciation annuity being charged to operating expenses and 6 per cent interest earned annually on the investment from the depreciation reserve. As a matter of actual practice in order to earn 6 per cent interest on the depreciation reserve, the utility reinvested this reserve in its property. During the past five years, January 1, 1940, to December 31, 1944, the sum of $4,500,000 of the reserve was used.

New business connected to the system earned at the rate of 10 per cent on this investment before Federal taxes. If the utility paid only the normal income tax and surtax rate of 40 per cent the net remainder would be an earning of 6.0 per cent on the $4,500,000 and the required depreciation reserve interest would be fully earned.

$4,500,000 at 10.0%	$450,000
Federal Income Taxes at 40% ..	180,000
Net Remainder	$270,000
Rate of Return on $4,500,000	6.0%

Referring back to the original set of conditions, it will be recalled, the utility has used the average earnings method to determine its excess profits credit; consequently no additional excess profits credit is allowed under the Federal excess profits tax law for the reinvestment of the depreciation reserve in the property; therefore all new net income to the utility resulting from the reinvested reserve is subject to the excess profits tax.

The Federal taxes on this net income would result in the following excess profits tax:

$4,500,000 at 10.0%	$450,000
Excess Profits Tax at 95%	427,500
Postwar Credit of 10%	42,750
Net Excess Profits Tax	$384,750
Net Remainder after Taxes	65,250
Rate of Return on $4,500,000	1.45%

UNDER this set of conditions the utility cannot earn the required interest on the reinvested depreciation reserve by 4.55 per cent (6.0 per cent — 1.45 per cent) and if full interest charges are to be accounted for, $204,750 must come from surplus.

Conditions become even more involved if the reasonableness of earnings for the utility is computed by the commission using the depreciated rate base. In order to determine a depreciated rate base the entire depreciation reserve would be deducted from the undepreciated rate base. This means that the total sum deducted would include the $4,500,000 used in above example and, in addition, if the commission eliminated all earnings on the reinvested reserve in the amount of $450,000 because of the excess profits tax liability, the result would be a double deduction in the amount of $4,500,000 for depreciation and then the loss of earnings on the reinvested amount of $4,500,000—a total of $9,000,000.

Loss of Earnings on New Capital Financed through Bonds

NEW capital additions to plant financed through bonds do not result in increasing the excess profits credit when the corporation is using the average earnings method for computing its excess profits tax.

Assume, for example, a $5,000,000 capital addition was financed through bonds, the interest rate being 3.0 per cent. Under the tax laws interest in the amount of $150,000 would be deducted before determining the net taxable income. However, any net earnings in excess of the $150,000 derived from the $5,000,000 investment would be subject to excess profits tax in the case of the utility under consideration.

The problem relative to earnings and taxes resulting from the $5,000,000 investment may be illustrated assuming first the utility only paid the normal income tax and surtax at the rate of 40 per cent. Second, assume identical earnings before taxes and interest but an excess profits tax at an effective rate of 85.5 per cent after the allowance for postwar credits.

Let it be assumed the net income from the $5,000,000 of new capital financed through 3 per cent bonds earned 8 per cent net before interest and taxes on income.

COMPUTED on the basis of normal income tax and surtax at 40 per cent the net return on the investment would be 6.0 per cent:

$5,000,000 at 8.0% (net before interest and taxes)	$400,000
Less: $5,000,000 at 3.0% Interest	150,000
Net Taxable Income	$250,000
Taxes at 40%	$100,000
Net Remainder to Company—	
Earnings at 8.0%	$400,000
Less: Taxes at 40%	100,000
Remainder	$300,000
Rate of Return on $5,000,000	6.0%

The computations for determining the net remainder after Federal excess profits tax would be as follows, assuming identical net before taxes and interest:

$5,000,000 at 8.0% (net before interest and taxes)	$400,000
Less: $5,000,000 at 3.0% interest	150,000
Net Taxable Income	$250,000
Excess Profits Tax at 95%	237,500
Postwar Credit of 10%	23,750
Net Excess Profits Tax	$213,750
Net Remainder to Company—	
Earnings at 8.0%	$400,000
Less Taxes at 85.5%	213,750
Remainder	$186,250
Rate of Return on $5,000,000	3.7%

In this case, assuming the excess profits tax was eliminated by the regulatory commission, the gross rate reduction would be $250,000. Consequently all earnings in excess of bond

¶ "IF *the utility industry should be required to reduce rates in order to eliminate the excess profits tax, many companies would be placed in the unfortunate position of being forced to seek rate increases following the war in order to employ a full operating force and to meet postwar conditions. Other companies would experience rate cuts in substantial amounts reducing their earning below a fair rate of return, which may result in destroying the financial credit of the corporation.*"

interest would be denied the utility. At this point the financial integrity of the utility is impaired relative to the $5,000,000 investment since earnings are limited to interest charges.

It is strange that the financial institutions and the utilities have not disclosed this fact to the regulatory commissions and to the Bureau of Internal Revenue.

Conclusions

THE unequal distribution of the excess profits tax on regulated utilities is well known by the utility industry and those regulatory commissions which have attempted to become acquainted with the facts. There exists a considerable range in the rate of return upon the rate base where excess profits taxes first become a liability; the exact rate of return depends upon a large number of factors applicable to each corporation in the determination of the excess profits credit. Regardless as to whether the excess profits tax begins at a low or high rate of return, the tax in itself cannot and does not measure excess earnings to be used to establish fair and reasonable rates for the future.

Many utilities are operating under adverse man-power conditions. In critical areas only the most essential functions are maintained in order to spread the help to fit the job to be done. The effect of the lack of man power has reduced operating expenses substantially below the prewar level of operations. This in turn further accentuates the net earnings, all, or the greater part of which, are subject to the excess profits tax. The name selected for this tax was extremely unfortunate for the public utility industry. The name excess profits tax has been misunderstood by many public officials from coast to coast.

One city official during a formal hearing urged the elimination of the excess profits tax through substantial rate reduction because of "the dislike of seeing 14.5 per cent of these excess earnings stick to the fingers of the utilities."

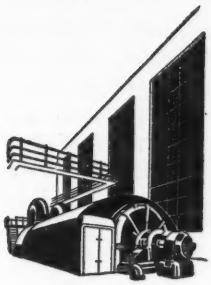
The truth is that in many instances the 14.5 per cent retained after the excess profits tax by the utility permits the payment of dividends and provides something for the postwar period.

If the utility industry should be required to reduce rates in order to eliminate the excess profits tax, many companies would be placed in the unfortunate position of being forced to seek rate increases following the war in order to employ a full operating force and to meet postwar conditions. Other companies would experience rate cuts in substantial amounts reducing their earning below a fair rate of return, which may result in destroying the financial credit of the corporation.

It is hoped that the urge to adjust rates based upon the increase in Federal taxes will be entirely eliminated through a conscientious effort of all interested parties to understand the application of these taxes and not be caught in the whirl of an ill-founded movement.

¶ "IF *Congress had agreed to the St. Lawrence project at the time it was first asked to do so, it might even have stopped Hitler from declaring war in 1939 . . .*"

—JAY FRANKLIN,
Columnist, Cleveland Plain Dealer.



How the Brown-out Was Put Over

This, declares the author, is explained in one easy lesson in the recent report received by Chairman J. A. Krug of WPB from Director Edward Falck of the OWU, whose job it has been to carry out the reduced lighting plan, a matter of considerable interest to the private utilities.

By T. N. SANDIFER

On May 8th, the day the nation celebrated victory in Europe, lights went on again all over the United States. By order of the War Production Board the "brown-out" was officially ended. True, there was a string tied to it in the form of a vague reminder that it might have to go on again if the coal shortage gets any worse. But notwithstanding the protracted coal mine wage troubles, Washington officialdom was inclined to think that the brown-out is probably off for good.

Anyhow, under the heading of "now it can be told," which characterizes so many interesting items previously covered by the veil of military secrecy, the facts and figures in connection with the brown-out have now been revealed.

The fact that it meant an annual loss of possibly $60,000,000 to private utilities in gross revenues (a considerable part offset by tax savings), the fact that the brown-out generally lived up to its advance expectation that it would save at the rate of 2,000,000 tons of coal annually, the fact that there were legal complications of enforcement—these and other factors in connection with the brown-out can now be told.

A major accomplishment in smooth administration, government-industry coöperation, and public compliance has taken place since this program to conserve fuel for war was first broached by Washington. The fact that it was a threat over the country from the time of the coal strike last year, looming and receding alternately with the fluctuations of the war, had little to do with the final result.

Probability of reinstating the restrictions on lighting previously in effect is based on the following:

The Solid Fuels Administration still holds that there is a coal shortage. It has never notified War Production Board that any letdown in require-

ments for essentials could be sanctioned. There is still a fuel oil shortage, which means added pressure on coal next winter. There is still an undetermined potential in war requirements which may have to be met from industry.

The ban on nonessential light use was only one of several related conservation measures. They were frankly emergency steps, and passed with the end of the emergency.

Issued on January 15th, at Judge Byrnes' instigation, the order established prohibitions on lighting to become effective February 1st, which covered operations of some 5,000 utilities and perhaps 5,000,000 consumers.

As of March 2nd, it had become necessary to order disconnect notices in only eighteen cases, according to field reports made to Washington. No instance had yet been reported where it was necessary actually to disconnect service, as an enforcement measure.

REPORTS received from utilities, from War Production Board field offices, and from other observers indicate that compliance has been from 95 to 99 per cent complete. An initial estimate of the fuel saving achieved, which was the stated objective of the order, shows 2,000,000 tons per year, and final figures are still being studied.

Since, Judge Byrnes, in his final report, referred to the maintenance of this restriction on nonessential lighting for a necessary period, the manner in which this conservation measure was launched, and has been administered, deserves attention. To the end, it functioned almost without notice to the public, and, to a large extent, almost without a ripple in the public consciousness, apparently.

How to conduct a "brown-out" in one easy lesson might be the title of the report which Chairman J. A. Krug, of WPB, recently received from Director Edward Falck, of OWU, whose particular job it has been to carry out the plan. In a few months the public and the utilities industries concerned were instructed as to the meaning of the order, administrative procedure was established, and the order made operative on a routine basis.

Justice Byrnes on January 10, 1945, released his press statement outlining an over-all government conservation program for coal and other scarce fuels which included the prohibitions in use of electricity later embodied in U-9.

The following day, at an Industry Advisory Meeting attended by fifty-eight electric utility representatives from all over the country there was a thorough exploration of the administrative problems involved, as well as the scope of the program. It was obvious that the principal loss would fall on them, but the utility representatives agreed wholeheartedly to support the government's plan. The President acknowledged his appreciation of this attitude of the industry in a press release from the White House.

UTILITIES Order U-9 was issued January 15th, with its prohibitions on lighting set to become effective in two weeks. This was felt to be the minimum time required to give notice to the affected utilities and consumers and to set up necessary administrative machinery for insuring compliance.

"Because of the unusually large

number of affected persons it was necessary to create administrative procedures which in large part were new to the War Production Board and the Office of War Utilities," Director Falck pointed out in his report. This observation has become known as a Washington yardstick in restrained comment.

"Administration of the order, as it affects consumers, was arranged at the level of the WPB field offices working under specific instructions both as to appeals for relief and compliance, which were worked out by the Office of War Utilities with the WPB Divisions of Field Operations and Compliance," he reported.

Procedures for handling consumer appeals were outlined in Field Processing Instruction 38. Procedures for compliance action against consumers were contained in Compliance Policy Letter 46.

On January 16th, Administrative Letter No. 1 was sent to all electric utilities notifying them of the issuance of U-9, outlining administrative procedures, and directing that they notify their consumers of the provisions of the order.

OFFICE of War Utilities retained administration of the order, as regards utility appeals for exemption. On the same day the order was issued, an exemptions committee was formed with V. M. Marquis, director of the power division, OWU, as chairman. This committee was created to act upon utility appeals under Paragraph (d) of the order which provided exemption from the brown-out for those areas where there would be no coal savings or conservation of other scarce fuels sought by the order.

This committee developed criteria for considering such appeals. In a series of daily meetings between January 15th and February 1st, the effective date, the committee decided that, generally speaking, the Pacific Northwest, California, and the Southwest should be exempt from the order at least until June 30, 1945. Meetings after February 1st resulted in disposition, mostly by denial, of several score additional appeals.

The statement of criteria adopted by the committee as a basis for its decisions was prepared by J. E. Moore, a committee member, and chief of the power supply section, OWU. At the time of its adoption, Mr. Moore reported that other members had concurred, with the notation that Walton Seymour, another member, did so subject to the general issue of whether all natural gas, other than that withdrawn from the ground incidentally to oil production, should or should not be considered as a scarce fuel. He was

¶ "THE *Solid Fuels Administration still holds that there is a coal shortage. It has never notified War Production Board that any letdown in requirements for essentials could be sanctioned. There is still a fuel-oil shortage, which means added pressure on coal next winter. There is still an undetermined potential in war requirements which may have to be met from industry.*"

stated to have raised this issue for consideration but without necessarily taking any firm position with respect to it.

In this statement "scarce types" of fuel are defined as follows: coal—bituminous and sub-bituminous, country-wide; anthracite, all sizes; lignite; residual fuel oil; Diesel oil; distillate; manufactured or mixed gas, all country-wide; natural gas which can be used to save coal or oil, in particular gas taken from a gas transmission system, which if not so taken could have been delivered to an area where it could be used to save coal or oil.

"Nonscarce types" are defined as natural gas which cannot be used to save coal or oil; petroleum refuse, not of commercial grade; industrial waste products, with possible exceptions.

As a general basis for exemption, the statement provides, "curtailment of electric service is considered not to be convertible into savings in scarce fuel with respect to particular power systems, or interconnected groups of power systems, if without curtailment and without use of scarce fuels, such systems can

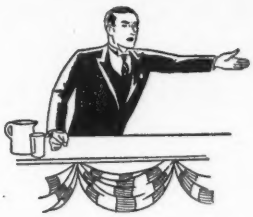
"Carry their own loads, and (b) provide for their scheduled maintenance outages, and (c) keep loaded to normal full capacity the existing transmission interconnections to adjacent areas where scarce fuels can be saved. (This does not mean the maximum capacity which might be used in emergencies, with impairment of voltage or threatened system stability but which would not be considered good practice for regular operation.)"

It was decided to ignore as being insignificant, relative to energy to take into account, such fuel consumption as these: Use of scarce fuel for spinning reserve when amount of such reserve would not be reduced by curtailment; use of scarce fuel during emergency conditions and unscheduled outages of generating equipment or transmission lines; use of oil as standby fuel for gas-fired plants during short periods of unusually cold weather.

The criterion of being able to load outgoing tie lines to normal capacity, it was provided, was to be applied on the basis of physical practicability of importing energy by the adjoining system and using it after import for fuel saving. No consideration was to be given to whether existing arrangements covered such purchase by the adjoining system, or whether the adjoining system would be likely to purchase the fuel-saving energy without an order.

In the case of large regions, the statement provided that where such an area qualified for exemption on the basis laid down, special consideration would be given to ignoring certain types of fuel consumption, so as to avoid breaking up the region into smaller areas of differing status, and complicate administrative procedure. The fuels thus covered include the use in part of the area, of relatively small proportions of interconnected Diesel engines, or other equipment using scarce fuel, for short period peaking purposes, or the use of scarce fuel by relatively small or isolated systems, usually Diesel engines, where the major systems in the area are to be exempted.

"In general," it was stated, "consideration will be given to exemption where only a small proportion of the kilowatt hours saved by curtailment



Compliance with Brown-out Rule

"A NUMBER of communities began large-scale voluntary brown-outs even before the effective date of U-9, among others Philadelphia, Cleveland and Akron, Detroit and Lansing, Michigan. Reports from both field offices and utilities show that compliance was at least 95 per cent within twenty-four to forty-eight hours. In many communities, especially a number of large metropolitan areas, it was 99 per cent complete according to reports at the time."

can be made effective in reducing generation using scarce fuels."

WITH respect to "islands" of enforcement in a large region otherwise exempted, it was provided, considerable lenience should be shown and no such island was required unless the island system were of substantial proportions. In the case of islands of exemption in a large region not exempt, standards were to be applied very strictly. The most frequent instances of the latter case, it was pointed out, are gas-burning internal combustion engines, and industrial plants on waste heat or refuse fuel generation.

Seasonal exemptions were provided if deemed appropriate for a period of three months or more out of the twelve, but it was specified that "the case for the exempt period must be clear and certain."

Individual field offices, it was said, performed their part in the program under detailed procedural instructions sent out from the division of field operations, under the title of Field Program Instruction 38, which was revised after its original issue, January 26th. These instructions originally provided for consumer appeals by letter, but were later changed to require appeals on a WPB form, to insure standardization. This form was WPB 4113.

In general, field offices were instructed to grant relief only in proven cases of essentiality for public health or safety, and to deny all appeals based upon financial hardship claims.

Consumer appeals were fewer than was anticipated, it is said. The total to March 15th was 1,106, of which 667 were approved and 439 denied. To insure uniformity of applica-

tion of policies and instructions a review system was operated, as a result of which, in 84 cases, field offices were advised from Washington that an apparently improper decision had been reached there, or requesting clarification of the situation. In 15 instances of this number, such action resulted in eventual reversal of the field office's decision, but in 43, the Washington office accepted the field office's view, and some other cases were pending at the time of Director Falck's report. In only one case was a consumer appeal carried by two reappeals to the director of OWU and, in this instance, the Washington office upheld the two previous denials.

As was anticipated, a large volume of appeals was received from utilities requesting exemption under Paragraph (d) (1) of the order, which were put in process. Up to early March a total of 248 applications had been received for system exemption, most of them being filed before the February 1st effective date. In certain cases, because of geographical circumstances, it was said, the terms of exemption included areas and utilities for which no formal appeal had been made; however, with few exceptions, the exemptions were to expire on June 30, 1945. OWU thus would have had an opportunity to review operations of the exempted systems. In a great many instances it was impossible to predict accurately the conditions beyond that date, due to uncertainty of hydro or load conditions.

There had been a growing pressure more recently from states using slack coal for generating electric power, especially Colorado and Wyoming, for exemption on the basis that production of domestic grades of coal is dependent on a market for slack coal. This situation had been referred to the Solid Fuels Administration but the brown-out ended before any report was made.

There had also been considerable pressure for exemption by isolated areas using small amounts of coal and fuel oil in electric generation. However, the OWU was inclined to hold firm on some of the latter when any substantial saving of critical fuel could follow a denial of exemption.

It will be seen that many exemptions were to have run out on June 30th. It is evident that consideration of further extension, or otherwise modifying existing orders, could occur in a far different atmosphere from that prevailing at the beginning of the year. Anticipated in the situation was, of course, a decision as to whether VE-Day could be held to have arrived, so far as this order was concerned. If not, then a broad review of operations appeared to be definitely in the cards.

In this connection it might be well to stress that what has been under discussion here is the "brown-out" on window and unessential display lighting, and not the "curfew" of later date, although this last war requirement was part of the general enforcement situation. The "curfew" ended on May 9th, the day after VE-Day marked the end of the brown-out.

The curfew comes to mind in connection with Director Falck's comment in his report that:

"The strict application of this exemption policy has created some rather difficult administrative problems."

For example, Monroe, Louisiana, was exempted because its electricity is

generated by noncritical fuel and because the electric system is not interconnected, whereas the city of West Monroe, directly across the Ouachita river, was not exempted, because it is interconnected with a utility which uses scarce fuel. The same situation, he noted, exists with respect to Alexandria and Pineville, Louisiana, likewise adjoining across a river.

However, in the case of Monroe, that city's authorities voluntarily agreed to conform to the restrictions as a public-spirited gesture to its adjoining community. The second cross-river situation was still under study when the end came.

THE case of 18 counties in eastern Texas is a further example. They were not exempted because it was believed at OWU that critical fuel savings could be attained by enforcement of the order. Special negotiations were conducted for administration of the order in New York city. Here the mayor offered to assume responsibility for compliance, through use of the city police, and for this purpose he requested that the chief of police be vested with authority to grant permission for lighting in addition to that permitted by the order for deeply recessed entries and large marquees, in cases where the police determined that this lighting was required for public safety.

This was treated as a blanket appeal for relief from the order, but was granted and, said the report, "compliance with the order in New York city has been outstanding." Later the instructions to field offices were amended to extend to any other large municipality the same arrangement. Only two such appeals were made on this ground from other cities, and in neither case was the basis considered justifiable, it is stated.

The New York enforcement measures went further. The State Emergency War Council enacted a war regulation prohibiting use of electricity in New York state for the purposes proscribed in the order; thus a violation of the order in that state was a misdemeanor, subject to court action in addition to the provision in U-9 for disconnecting service in the case of persistent and willful violators.

AS a matter of fact, electric utilities had been instructed by telegram as early as January 19th to seek coöperation of municipal law enforcement agencies to obtain uniform and complete compliance. This was supplemented on January 22nd by a tele-

¶ "EXPERIENCE *with the order* [*brown-out*] *led to two additional classes of lighting being restricted: electricity for advertising, promotional decorative, ornamental or sign lighting in arcades, subways, or other public passageways, which merely clarified the original intent of the order; and later, an amendment prohibiting electricity for lighting entryways in excess of the amount needed for public safety, and, in no case, in excess of 60 watts.*"

graphic appeal to mayors of all communities of more than 25,000 people, to most of which appeals there was an immediate affirmative answer.

While Director Falck has found, he says, that compliance in any community once obtained, is still not assured, and that there is a tendency for violations to reappear if vigilance is relaxed, compliance generally was prompt in forthcoming.

A number of communities began large-scale voluntary brown-outs even before the effective date of U-9, among others Philadelphia, Cleveland and Akron, Detroit and Lansing, Michigan.

Reports from both field offices and utilities show that compliance was at least 95 per cent within twenty-four to forty-eight hours. In many communities, especially a number of large metropolitan areas, it was 99 per cent complete according to reports at the time.

Furthermore, Director Falck says, "I take considerable satisfaction in reporting that the brown-out went into effect with virtually no confusion and with a minimum of protest."

Comment on the brown-out, both from press and public, he said, "has been astoundingly favorable."

The most significant adverse comment has been in the form of letters from small merchants, it is reported, who cater to an evening trade, but even in this category public complaint and criticism has been surprisingly small.

AT the outset, it is stated at WPB, a considerable pressure campaign developed from local authorities and tradespeople in California against application of the order to that state. This, of course, ended when it was determined that the area should be exempted because studies of utilities operations showed the brown-out would save no scarce fuels as required by the order.

Another source of protests were sign companies and outdoor advertising companies, which obviously were hard hit particularly by the restrictions in U-9. However, said WPB, such protests were surprisingly few.

In fact, the Outdoor Advertising Association of America issued publicity to its members urging a cheerful acceptance of the order's restrictions.

This step, said WPB, "has had a wholesome effect and there has been no semblance of organized pressure from this industry."

Further referring to the letters from small evening trade merchants the majority of such letters suggested alternative ways of saving electricity, such as straight percentage cuts in electric consumption imposed on all users, or a national voluntary conservation campaign. The letters from New York city in this category at one time assumed the proportions of a pressure campaign, but this manifestation soon trailed off.

A SMALL volume of letters came from citizens and officials, protesting the refusal of exemptions for their particular areas. Generally, protests have been directed to members of Congress, rather than to WPB, but members of Congress, it is said, do not appear to have been entirely sympathetic with their constituents' plaints in this instance. In most cases, it is said, they merely transmitted the kicks to WPB without comment.

The initial reaction to U-9, as analyzed at WPB, was favorable. Con-

sumer compliance, as in the case of appeals, is lodged with the WPB field offices.

WPB has no count of the number of compliance warnings, the so-called 3-day notice, which have been served on consumers, although obviously these have been considerably in excess of the number of disconnect notices. Field offices report that the warnings were very effective in securing coöperation.

Prior to invoking formal procedures against violators, it has been the practice to have electric utility suppliers attempt informally to obtain compliance through personal contact with the consumer. Where this did not work, the utility was required to notify the field compliance officer who then issued a telegram to the consumer, directing that within three days the consumer either report that the alleged violation is, in fact, not a violation, that it has been discontinued, or that an appeal has been filed for relief, and pending disposition of the appeal, has turned out the proscribed lighting. (Three-day notice procedure.)

WHERE no reply was received at the end of three days, the compliance officer formally notified the utility to disconnect the consumer's electric service. Even at this stage the consumer had the opportunity to prevent disconnection of his service by supplying the utility with a written assurance that the violation had been curbed and would not be renewed.

Experience with the order led to two additional classes of lighting being restricted: electricity for advertising, promotional decorative, ornamental or sign lighting in arcades, subways, or other public passageways, which merely clarified the original intent of the order; and later, an amendment prohibiting electricity for lighting entryways in excess of the amount needed for public safety, and in no case, in excess of 60 watts.

Such was the saga of the brown-out. We hope it may never come again. But if it does, its history of successful administration under WPB Office of War Utilities gives us confidence in it as an instrument of effective war restriction.

The Importance of Power Plants

"THERE is a direct relationship between horsepower and the standard of living. The savings of most countries which have a surplus have been invested in power plants, and, in countries mainly dependent upon secondary production, the standard of living or production is proportionate to the availability of horsepower.

"If some means can be found within this universe of obtaining power more cheaply or with less capital investment, a large improvement will take place in the world standard of living, or in our ability to carry more people. Perhaps this development may come from the disintegration of our so-called elements."

—A. G. WARNER,
Finance member, Board of Area Management, Victoria, Australia.

Government Utility Happenings

REA co-ops throughout the country were following with interest the recent developments in connection with the Lucas Bill which would expand the lending power of the Rural Electrification Administration to a total of $585,000,000, to be expended in a 3-year postwar program. Although it had been expected that the Senate Agriculture Committee considering the Lucas Bill would also give early consideration to the Shipstead - Wheeler - Aiken Bill to remove REA from the control of the Agriculture Department, the sudden decision of the Senate committee to merge both measures came somewhat as a surprise.

It was known that a few days previous Senator John B. Bankhead (Democrat, Alabama) and Senator McKellar (Democrat, Tennessee), president of the Senate, had called on President Truman to learn the President's attitude on making REA an independent agency. Senators Aiken (Republican, Vermont) and Shipstead (Republican, Minnesota), it was reported, had also urged the President to view the proposed legislation with favor. Under the circumstances, it was expected that the Senate Agriculture Committee might wait for a White House recommendation before proceeding with the Shipstead-Wheeler-Aiken Bill.

On April 28th, however, over the protest of Senator Lucas (Democrat, Illinois), the Senate committee, by a vote of 13 to 6, approved an amendment by Senator Shipstead to the Lucas Bill which would repeal the 1939 executive order of the late President Roosevelt, which put the REA under Agriculture Department control. After the committee vote the Illinois Senator said he would await word from the President before determining whether to oppose the Shipstead amendment in the Senate.

POSSIBILITY that the Shipstead amendment to the Lucas Bill might be a partisan issue was seen in the fact that all nine Republicans on the Senate Agriculture Committee voted in favor of Shipstead's measure, together with four Democrats: Senators Wheeler (Montana), Bilbo (Mississippi), Stewart (Tennessee), Downey (California). The five Democrats opposing the amendment were Chairman Thomas (Oklahoma), Senators Bankhead (Alabama), Ellender (Louisiana), Lucas (Illinois), Russell (Georgia), and Hoey (North Carolina).

The view was expressed by some of the committee members that President Truman was likely to hold up naming an administrator to head REA until Congress had disposed of the question of whether REA should remain under the Agriculture Department or become an independent agency as proposed in the pending Shipstead amendment to the Lucas Bill. The REA Administrator's office has been vacant since December 1, 1944, when Harry Slattery resigned, as he explained, to bring "into the open" the fight to restore REA independence. President Roosevelt's nomination of Aubrey Williams, former National Youth Administrator, as REA Administrator was rejected by the Senate 52 to 36 on March 23rd after a bitter debate involving the charge of political abuse of REA.

Speculation as to the explanation for the solid Republican support of the Shipstead amendment in the Senate committee was chiefly based upon the fear that a continuation of REA control by a department heading up under a Cabi-

net officer might result in more of a tendency to conduct REA operations in favor of the party in power than if REA were made an independent agency under an administrator whose term of office would extend beyond the appointive power of any particular 4-year administration.

An attempt by the Senate to increase REA appropriations for the fiscal year ending June 30, 1946, was compromised by a congressional conference in disposing of the Agriculture Appropriations Bill sent to the White House on May 1st for the President's signature. The lower house had voted $60,000,000 for REA lending authority—a reduction of $25,000,000 from the amount recommended by the Budget Bureau in submitting the Agriculture Appropriations Bill. The Senate, on the other hand, approved its Agriculture Committee's recommendation to increase this amount to a total of $125,000,000. The conference report finally approved by both branches of Congress fixed the sum at $80,000,000 —a reduction of $5,000,000 from the original Budget Bureau estimate. Another attempt by the Senate to include $35,000,000 for the immediate use of REA upon passage of the bill was eliminated in conference.

A similar compromise was made in the appropriation for REA's administrative expenditures. The House originally voted $3,150,000. The Senate voted $3,300,000. The amount finally fixed was $3,200,000.

* * * *

Municipally owned electric utilities contribute from one-sixth to one-fourth of their gross revenues to city operating funds in place of taxes, the International City Managers Association reported in an announcement released in Chicago on April 25th. The amounts transferred to the general city government are said to range from 1 per cent in Seattle and Tacoma, Washington, to 45.5 per cent in Jacksonville, Florida.

Contributions of more than 29 per cent were listed for 18 council-manager cities and for more than 50 per cent in 8 cities: Bedford, Virginia; Belleville, Kansas; Brownsville, Texas; Cushing, Oklahoma; Elwood City, Pennsylvania; Front Royal, Virginia; Gastonia, North Carolina; and Tallahassee, Florida.

Of the 128 municipally owned electric utilities in Kansas, those in 118 cities were said to contribute an average of 26.2 per cent of their gross revenues.

In 22 cities of more than 50,000 population having city-owned electric utilities, no contribution of any kind is reported for half of the plants. The utilities in the other 11 cities claim transfer of funds slightly less than 17 per cent of their gross to the city.

The report compared information about municipally owned electric plants with that available on taxes paid by privately owned utilities. The president of the Edison Electric Institute recently estimated that 24 per cent of the gross revenues of privately owned electric utilities is paid out in taxes. This estimate, the report said, agreed substantially with a detailed analysis of 245 privately owned utilities made in 1943. It showed they paid in taxes an average of 22.6 per cent of their gross revenues.

These reported contributions in lieu of taxes are apparently based on self-declarations from municipal plant management, not subject to check by independent regulatory supervision as is the case with FPC reports on regular taxes paid by business-managed electric companies. The data were doubtless obtained by questionnaire method or from reference sources based on questionnaire survey. Municipal plants do not, of course, pay any Federal taxes, and in only rare instances do they pay state or county taxes. The report makes no mention of possible compensating benefits to municipal plants through the use of city government services (such as legal, engineering, housing, etc.). It might also be observed that municipal plant payments to city funds are not parallel to utility tax payments alone, but rather to a combination of utility taxes plus return to utility investors. This is because municipal plants, through such contributions, are

in effect, returning profits to the city taxpayers on the municipality's investment, as well as payment in lieu of taxes which might otherwise be obtained from private company operations.

* * * *

THE Senate Commerce subcommittee has closed its hearings on the Murray Bill to set up a Missouri Valley Authority after three weeks of testimony concluded by Senator James Murray (Democrat, Montana), author of the measure. Senator Murray appeared in rebuttal to contradict voluminous testimony the subcommittee had taken in opposition to the measure.

Judging from the somewhat hostile attitude of the subcommittee, proponents of the bill were resigned to the adverse recommendation from that board. It came in the form of a unanimous vote of the Senate Commerce Committee against the bill. The vote was taken May 2nd. More sympathetic treatment is expected from the Senate Flood Control Committee and also the Senate Agriculture Committee to which it must in turn be referred.

Subcommittee hearings were presided over by Senator Overton (Democrat, Louisiana) who demonstrated his critical attitude towards the bill when he clashed with CIO Witness John Brophy as to the effect of the Murray measure on the autonomy of local government. The Senators seemed to be impressed by the opposition of twenty-odd reclamation and water control agencies, headed by the national Reclamation Bureau. These associations went on record as favoring the continuation of Missouri river control, including power developments, by established government agencies, notably the Army Engineers and Reclamation Bureau.

Secretary Ickes, who appeared before the hearings, endorsed a Missouri Valley Authority in principle but immediately cast the nature of his endorsement in doubt by suggesting that it should head up under the control of the Interior Department. This is in substance what would be accomplished by a bill introduced by Senator Mitchell (Democrat, Washington) to set up a Columbia Valley Authority which would be subordinate to a national development board composed of the heads of the War, Interior, and Agriculture departments to govern top policy matters.

MAJOR General Eugene Reybold, chief of the Army Engineers, told the Senate subcommittee that the Murray Bill would hamstring navigation and flood control. There was some speculation that President Truman himself might try to break the deadlock over Missouri river development by promoting a compromise which would largely favor control by Army Engineers. While he was Vice President, Truman made the suggestion that he would like to see his friend, Lewis A. Pick, sent back to the Missouri valley after the war to direct the program which carries his name and which was adopted by Congress in principle. If such a move develops, Major General Pick, who is currently in charge of the construction of the Ledo Road in Burma (more popularly known as the Stilwell Road), may be detailed back to his old job of supervising Missouri river work for the Army Engineers. It was during his previous detail as Missouri river engineer for the Army that Pick formulated the "Pick Plan" (stressing flood control and navigation) and became a personal friend of the new President. Such a compromise, of course, cannot be worked out at this session.

* * * *

PRESIDENT Truman on May 2nd disclosed that he was nominating David E. Lilienthal, incumbent, for a new 9-year term as chairman of the Tennessee Valley Authority. Senator McKellar (Democrat, Tennessee), who succeeded Mr. Truman as presiding officer of the Senate, called on Truman to drop Lilienthal when his current term expired May 18th. But the chief executive was reported to have told McKellar that Lilienthal's long successful service on TVA compelled him to renew his commission. McKellar and Senator Stewart (Democrat, Tennessee) had complained that

they had received political opposition from Lilienthal.

* * * *

FOLLOWING its recent action on the Missouri Valley Authority Bill, which it voted unanimously to report unfavorably, the Senate Commerce Committee has tentatively set June 11th as the date for opening hearings on a bill to set up a Savannah Valley Authority. These hearings were to be followed by committee consideration of two other authority bills, the Ohio Valley Authority Bill and the Columbia Valley Authority Bill, in the order named.

* * * *

MUNICIPAL plant and other public ownership circles were interested in a bill recently enacted by the Colorado legislature which increases the percentage of signature requirements on initiative legislation. Under the previous law the signatures of only 8 per cent of the voters were required on petitions to put a proposed law or constitutional amendment on the ballot. Under the new Colorado law, the proportion of signatures required will be 15 per cent of the number of voters.

Advocates of the measure claim that it would make it more difficult for special interest groups to force a vote on measures for which there is no great public demand. It was pointed out that in many instances where an initiative measure is adopted by a vote of the people, it gets approval of only a minority of the voters. Thus, out of three initiative measures which carried at the Colorado election last November, not one received a majority of all the ballots cast. This was because thousands of citizens who voted for President did not vote on the initiative measures at all.

Friends of public ownership in the utility field, however, are somewhat apprehensive that the increase in the requirement of signatures for referendum legislation may make it more difficult to secure future legislation desirable for the promotion of public ownership. Further, it was pointed out that the establishment of such a pattern for statewide legislation might be reflected in moves to increase petition requirements to initiate local elections which may be necessary for the establishment or expansion of municipal plants. They deny that the way the initiative has been working in Colorado results in lawmaking by organized minorities at the expense of apathetic majorities.

* * * *

GOVERNOR Dwight Griswold of Nebraska has praised the plan worked out by the senators of the state unicameral legislature in solving the Omaha public power problem. His statement was interpreted as meaning that he approves the compromise bill passed by the legislature which would make it possible for Omaha and surrounding territory to acquire the properties formerly operated by the Nebraska Power Company. This plan establishes a public power district which would supersede a previous statutory city district and the former would be enabled to take over the Nebraska Power properties now held by a nonprofit group known as the Omaha Electric Committee, which purchased the property, through acquisition of common stock. There had been some opposition within the city to the proposed acquisition of the properties by the Loup River Public Power District.

* * * *

THE first steps in the proposed plan for modernizing the city-owned transportation system of St. Petersburg, Florida, are reported to be the replacement of obsolete vehicles and equipment by modern trackless trolley coaches, and the appointment of the best available expert as director of utilities, according to a recent statement by City Manager Carleton F. Sharpe. The city council has already authorized purchase of some modern vehicles, which will be the nucleus of the new fleet.

These changes are the preliminary phases of a 10-year improvement program submitted to the city by Ford, Bacon & Davis, consulting engineers.

Wire and Wireless Communication

ANTICIPATING by a few days victory in Europe, the communications division of the WPB Office of War Utilities announced the setting up of new controls on telephone and communication equipment to take care of the interim between VE-Day and victory in Japan. Generally, these changes were in the nature of easing previously existing controls. On April 27th the telephone Order U-6, which had limited the installation of new telegraph and teletype service, was revoked. This means that if materials become available the telegraph industry and the teletype branch of the telephone industry will be free to install new facilities to meet all requests for service.

On the same day WPB Order U-8 was revoked, which limited the manufacture of telephone instruments. As a practical matter, however, it was not expected that the telephone manufacturing industry would be able to make many more telephones during the coming 12-month period than had previously been allocated under the schedule for new instruments planned by the WPB Requirements Committee. This, according to Edward Falck, director of the Office of War Utilities, amounted to 1,220,000 instruments, whereas there is an estimated total of 2,720,000 applications for telephone service, not all of which, however, are dependent on the obtaining of new telephone instruments alone. It is known that most of the "held orders" are now the result of inadequate central office equipment which may take even longer to correct than service delays due entirely to the lack of telephone instruments.

Mr. Falck said, however, that he hoped the compilation of U-2 would be a "step towards meeting the present unsatisfied demands for telephone service." The elimination of U-2 will put manufacturers in a position to increase their output to the limit of available man power and materials.

ON May 3rd, WPB revised its basic order governing telephone service, known as "U-2." The changes in this order were not considerable. But, as revised, U-2 now requires telephone companies to disconnect telephone service obtained under priority qualifications where it finds that the real user of the service is no longer entitled to such preference. The order of preference for telephone service under the new U-2 is as follows:

Schedule A service and approved pay stations
Changed address business service
New business service for veterans
New business service
Changed address residence service
Additions to business service
Schedule B residence
Schedule C residence
Temporary health emergency service
New residence service generally

Schedules A, B, C generally included the following qualified applicants:

Schedule A includes armed forces; Federal, local, and foreign governments for official business as well as direct war production activities; public utilities and

petroleum production; also, public health and welfare service, including all charitable institutions; press and radio stations; housing developments; food processing, distribution, and storage.

Schedule B includes residence service where physicians certify that serious illness, including complicated pregnancy, exists. Schedule C includes residence service for the wife of a member of the armed forces on active duty away from home where she is pregnant or there is no one else in the household except small children.

Members of the Merchant Marine and their families are included for the first time in the revised order in the definition of Schedule C applications, which are entitled to new residence telephone service ahead of unclassified new residence service applications. Schedule C previously applied only to members of the armed forces and their families. The conditions for classification of both servicemen and members of the Merchant Marine and their families in Schedule C remain unchanged.

Another change in the revised order eliminates the provision restricting the number of telephones that were permitted in any central office to 105 per cent of capacity figured by prewar standards. The effect of this change will be to permit some expansion in the number of connected telephones in many central offices throughout the country. Several other minor alterations also are made in the new version of the order, which replaces Order U-2 as amended December 19, 1944.

* * * *

THE National War Labor Board on April 27th amended the resolution which established the National Telephone Panel so as to give the panel the authority to make final decisions on voluntary applications for approval of wage adjustments in the telephone industry.

By virtue of the board's new action, final authority on all voluntary wage applications now rests in the National Telephone Panel except for those cases in which (1) the decision is not unanimous and a member of the panel requests that the case be submitted to the board for a ruling; (2) there are issues affecting national policy; or (3) approval of the Director of Economic Stabilization is required because of price ceilings or increase in cost to the government.

In addition to expanding the scope of the panel, the action of the board is expected to expedite the handling of an average of 20 to 30 voluntary applications that have been coming before the board each week.

The previous procedure was to have the applications brought before the panel, which would make recommendations in the light of the national wage stabilization policy for the industry. Final decisions on the applications were made by the board.

Consideration of the voluntary applications is based on the wage stabilization policy for the telephone industry as established by the panel and unanimously adopted by the board on February 13, 1945.

The panel, consisting of public, labor, and industry representatives, has jurisdiction over wage stabilization matters and labor disputes in the telephone industry throughout the country.

* * * *

A SUIT to compel the New York Telephone Company to recapture all telephone instruments save one from each of its residential subscribers, so as to provide service for its long waiting list, was filed recently in the New York Supreme Court by Leon Leighton, an attorney with offices in New York city. Justice David W. Peck reserved decision.

Mr. Leighton, who is on the waiting list for telephone service at his home in Scarsdale, New York, contended that the company could collect enough extension and extra telephones from its subscribers to take care of its 75,000 waiting applicants.

The telephone company's position, as set forth in a statement, is that the rationing of telephone equipment is controlled by the War Production Board, which has reached the conclusion that

"recapture of residence extension telephones would be undesirable." The company said it is in "complete agreement" with this conclusion, because "such a plan would take away from individuals something they have had for a long time and would be a form of rationing which the government has, as a rule, avoided."

Moreover, the company's statement said, the WPB has authorized manufacture of new instruments, and while this will not solve all of the problem or any of it immediately, "with the improved outlook, substantial progress could not be made in a residence extension recapture program before new instruments will become available in as great a volume as it will be practicable to install them."

* * * *

THE Western Union Telegraph Company was recently authorized by the Federal Communications Commission to make substantial reduction in international message rates. Effective May 1st, a charge of 4 cents a word was scheduled to be made for full-rate international messages carried overland to gateway points for transmission out of the country, compared with previous overland rates of 4 to 15 cents a word.

Also effective May 1st, Western Union messages from United States gateway cities to Europe, South America, the West Indies, and Central America were reduced to a uniform full rate of 20 cents a word, bringing Western Union's overseas charges into line with those announced last month by RCA Communications, Inc., Commercial Cable Company, and Mackay Radio & Telegraph Company.

Thus, for example, a message from Chicago to Moscow costs 24 cents a word, 4 cents a word overland from Chicago to the New York gateway, and 20 cents a word from New York to Moscow. The previous charge was 38 cents a word, 8 cents from Chicago to New York, and 30 cents from New York to Moscow.

* * * *

WALTER S. GIFFORD, president, told stockholders of the American Telephone and Telegraph Company last month that $1,000,000,000 or more in new equipment would be needed by the Bell system "quickly" after the war to meet civilian demands. Mr. Gifford said:

> While our products go for war purposes, we get farther and farther behind in facilities for civilians. Our most serious shortage is central office equipment and that cannot be made and installed quickly. Therefore, even when the war ends, or even when equipment can be manufactured again in quantity for civilian use—if that should occur before the war ends on both fronts—we shall be in a different position than we have been at any peacetime in these twenty years. We shall be without enough equipment to give everyone the service they want. We shall be confronted with a rush job of getting that equipment in. It is inevitably going to take a relatively long time; it will undoubtedly seem too long for those who are waiting for telephone service that they can't get.

Mr. Gifford stated that there were 1,800,000 applications for telephone service unfilled because of lack of facilities. Bell system telephones in service have grown from 11,168,000 twenty years ago to 21,580,000 at present, he said.

The average number of shares held per stockholder has not changed much in the last twenty years—26 shares then compared to 29 now, Mr. Gifford said, adding that "no stockholder owns as much as one-half of one per cent of the stock."

Twenty years ago Bell system debt was 35 per cent of its investment in telephone plant; today it is 25 per cent, Mr. Gifford declared.

Replying to a stockholder's question about splitting company stock, Mr. Gifford said the management considered it inadvisable.

At the request of the management, stockholders by a vote of approximately 20 to 1 rejected resolutions that the company retain its teletype and leased wire systems and that it liberalize its pension plan. The resolutions, submitted by stockholders, had been included in the proxy statement of the meeting.

The resolutions had been submitted by stockholders in the interest of certain groups of Bell system employees.

Financial News and Comment

By OWEN ELY

United Gas Improvement Company

(*Series of holding company reviews.*)

UNITED GAS IMPROVEMENT COMPANY, one of the oldest and formerly one of the largest utility holding companies, was incorporated in 1882 and has paid dividends on its common stock since 1885. In 1940, before the company began its partial dissolution program, assets totaled $846,000,000; at the end of 1944 they had been reduced to $152,000,000.

The company's principal investments in 1942 were 10,243,344 shares of Philadelphia Electric Company, 2,017,490 shares of Public Service Corporation of New Jersey, and 375,000 shares of Delaware Power & Light. There was also a large portfolio of smaller holdings, including investments in other holding companies such as American Superpower, American Water Works, Commonwealth & Southern, Midland United, Niagara Hudson, etc. The company also controlled a number of eastern gas companies and a few scattered utilities.

At that time the company had outstanding about $75,000,000 of $5 preferred stock and 23,252,010 shares of common stock. The SEC in 1941 formulated an integration plan for the system, limited to properties in southeast Pennsylvania, northern Maryland, and Delaware. However, the company adopted a program for the liquidation of its more important holdings, as well as some of its smaller western properties. In 1943, the investments in Connecticut Railway & Lighting and Concord Gas Company were disposed of.

In June of that year each share of Philadelphia Electric Company common was changed into nine-fortieths of a share of $1 dividend preference common and thirty-one-fortieths of a share of new common; the holdings were distributed to UGI stockholders. The preferred stock received (in retirement) 3 shares of the $1 preference common and $40 cash, and UGI common received one-third of a share of the new Philadelphia Electric common and one-twelfth of a share of Public Service Corporation of New Jersey. This was followed in May, 1944, by a distribution to common stockholders of the 1,162,600 shares of Delaware Power & Light (one-twentieth of a share of Delaware for each share of UGI). Previously, Delaware had exchanged its investment in Erie County Electric for cash and stocks of Eastern Shore Public Service Company (held by the Associated Gas system).

Finally, UGI reduced its burdensome number of shares by a 1-for-10 exchange in May, 1944. At the end of last year the company still owned a substantial portfolio, including some 24 dividend-paying preferred and common stocks and 23 nondividend-paying items. Dividends from "subsidiaries" amounted to about $958,000 compared with dividends from other companies of $1,069,000 and miscellaneous income of $283,000. Expenses, taxes, and reserves reduced earnings to $919,207 or about 40 cents a share. A dividend of 35 cents a share was paid February 28, 1945, on the new common stock.

CONSOLIDATED earnings of UGI and its subsidiaries for the twelve months ended March 31st amounted to 62 cents a share and parent company

earnings were 45 cents. UGI is currently selling about 17, the range for the new stock this year being 17¾-13¾, and last year 15½-11⅛. At the present price, the stock is selling at nearly 38 times the parent company earnings and 28 times the consolidated share earnings; the dividend yield is slightly over 2 per cent. These anomalous figures seem to indicate that the stock is selling on the basis of liquidating value rather than earnings and dividends.

The stock has a par value of $13.50 and a book value of about $20.70. This is after reserves for possible losses on investments amounting to $34,747,472. But since investments are carried at "cost or less," there is little data to indicate the exact break-up value. However, the company's investments in American Water Works, Commonwealth & Southern, and Niagara Hudson, all of which are non-dividend paying, aggregate about $16,000,000 at current market prices. Assuming that other investments may be capitalized on a 6 per cent basis, they would be worth about $34,000,000. The company also has net current assets (almost entirely in cash) of over $5,000,000. The total amount of these three items is about $55,000,000 or $24 a share.

This estimate is, of course, highly approximate. However, the investment of about $10,800,000 in Niagara Hudson Power first and second preferred may have moderate appreciation possibilities (as well as the $3,800,000 holdings of common stock) if and when the Niagara system is financially rehabilitated—which is expected by some interests before the end of 1945. There is about $14 in arrears on both preferred stocks, and under normal conditions the stocks might be expected to sell above par. (They are currently around 97 and 89 respectively.)

According to the proxy statement for the May 7th meeting, two stockholders indicated their intention to present resolutions for complete dissolution of the company, since liquidating value was estimated to be much higher than market value. They believed that the management was considering plans to retain and acquire utility properties in Pennsylvania and to continue as an investment concern. In opposition to the resolution (which was voted down) the management stated that it intended to continue the company in its present status rather than as an investment trust—that it would be disadvantageous to sell holdings at forced sale or to distribute them to stockholders, and that contingent liabilities in the form of guaranties present legal obstacles to dissolution.

The latter was probably a reference to the company's relations with the city of Philadelphia. The municipal gas works has been operated under lease by UGI or its subsidiary (Philadelphia Gas Works Company) for over forty years. Under the third lease dated 1938 and amended in 1939, performance of the lease by the Gas Works Company is guaranteed by UGI. The Gas Works Company receives a management fee of $500,000 per annum plus additional compensation, the total not to exceed $800,000 (which includes some salaries). The Gas Works in the past two years has paid annual dividends of $190,000 to UGI. The company does not publish a balance sheet and it is difficult to determine whether the investment represents a "hidden asset." However, judging from the consolidated balance sheet, this appears unlikely.

It is not clear what additional steps may be necessary to complete the UGI integration program, but the major part is probably completed.

Manufactured Gas Stocks

THE accompanying table presents recent information on nine stocks of manufactured gas companies. Birmingham Gas has been added to the former list in the March 1st issue. That company obtains its gas under contract from the by-product coke plants of the Sloss-Sheffield Steel & Iron Company, Alabama By-Products Corporation, Republic Steel Corporation, and Woodward Iron Company. Until recently it was controlled by the American Gas & Power Company through ownership of 62.82 per cent of

the common stock. (The voting power ratio would be somewhat smaller, as the preferred stock had voting rights.) On January 18th the SEC approved the sale of this stock to Southern Natural Gas Company at $9.50 a share. Southern also offered to purchase from the public at the same price the remaining common, but the offer remained open only until February 23rd and no statement has been issued as to the amount now remaining in public hands.

In the purchase offer, attention was called to a dividend restriction imposed by the SEC. So long as the ratio of outstanding funded debt to property exceeds 50 per cent the company will not pay out more than 50 per cent of net available earnings, or in any event more than 60 cents a share in any twelve months' period.

Since our previous compilation of three months ago, the group has participated in the general rise of the utility group. The biggest advance was the 7-point gain by Brooklyn Union Gas, the most active issue and the only one listed on the New York Stock Exchange. Fall River Gas is up about 4 points, Haverhill 3, Bridgeport 2, Brockton 1¼, and Springfield 1 point; Hartford and Providence are about unchanged. However, the markets for most of these stocks are quite inactive—presumably they are closely held by New England individuals or investment companies—so that it is difficult to obtain exact prices or price ranges.

THE advance in Brooklyn Union Gas appears to be a recognition of the progress made by the company in its refunding program, and the substantial improvement in earnings. Despite the advance, the stock is still selling at the lowest price-earnings ratio of any issue in the group with the exception of Birmingham Gas.

The average price-earnings ratio is 14.6 (excluding Birmingham Gas, it would be 15.6). The average yield is 5.4 per cent. These figures are about in line with those for electric-gas issues, but are more favorable than for the natural gas group.

How Should Nonrecurring Tax Savings Be Handled?

IN recent years the utility companies have been able to take advantage of refunding operations (which involve payments of premiums on old securities) and the sale of subsidiary departments or isolated properties, to effect large nonrecurring tax savings. Doubtless these savings have been a considerable stimulus to the planning of refundings even where interest savings are relatively small.

In some cases, as with Puget Sound

MANUFACTURED GAS COMPANY STOCKS

Where Traded		*Price About*	*Earnings Latest*	*Earnings Previous*	*Price-Earn. Ratio*	*Div. Rate*	*Yield About*	*Approx. Range 1945*
S	Brooklyn Union Gas ..	32	$2.90(b)	$2.26	11.0	$1.00*	3.1%	32–21
C	Bridgeport Gas Light .	27	1.46(a)	1.48	18.5	1.40	5.2	...
O	Hartford Gas	40	2.10(a)	2.26	19.0	2.00	5.0	...
O	Brockton Gas Light ...	11	.73(a)	.70	15.1	.60	5.5	...
C	Providence Gas	9	.47(a)	.53	19.2	.50	5.6	9¼–8¾
O	Haverhill Gas Light ...	23	1.75(b)	1.45	13.2	1.40	6.1	...
O	Springfield Gas Light .	28	1.84(a)	1.42	15.2	1.60	5.7	28–25
O	Fall River Gas	30	2.28(b)	2.02	13.2	1.80	6.0	...
O	Birmingham Gas	9	1.36(c)	1.09	6.6	.60**	6.7	...

S—Stock Exchange. C—Curb. O—Over counter. *Indicates present annual rate. **Payments irregular (60 cents in 1943, 30 cents in 1944, and 30 cents early in 1945). (a) Twelve months ended December 31, 1944. (b) Twelve months ended March 31, 1945. (c) Twelve months ended September 30, 1944.

Power & Light in 1943-44, the tax saving resulted in a "mark-up" of current earnings—now being corrected as taxes return to normal. In many cases, however, a "charge in lieu of tax savings" has been inserted in the income account, so that buyers of the company's securities will be better informed regarding the earning power.

Superficially, it would not seem to make much difference where this special charge is located in the income statement. Indirectly, however, its location may be of considerable importance. If placed

VIRGINIA ELECTRIC & POWER

PRO FORMA INCOME STATEMENT FOR 1944 AS ORIGINALLY SET UP

Operating revenues	$39,372,508
Operation	$14,806,805
Maintenance	2,284,599
Depreciation	2,709,512
Taxes—Federal income and excess profits (excluding reductions (1) as shown separately below, and (2) of $4,148,050 related to and applied against items charged directly to surplus)	7,816,745
Taxes—other	3,292,193
Net operating revenues	$ 8,462,654
Other income—net loss	45,361
Balance	$ 8,417,293
Interest and amortization	2,409,075
Amortization of plant acquisition adjustments	693,168
Net income	$ 5,315,050
Reduction in Federal excess profits taxes resulting from the amortization of facilities allowable as emergency facilities under the Internal Revenue Code, which facilities are expected to be employed throughout their normal life and not to replace existing facilities	609,949
Balance	$ 5,924,999
Preferred dividend requirements	1,447,355
Balance for common stock and surplus	$ 4,477,644

PRO FORMA INCOME ACCOUNT IN FINAL PROSPECTUS

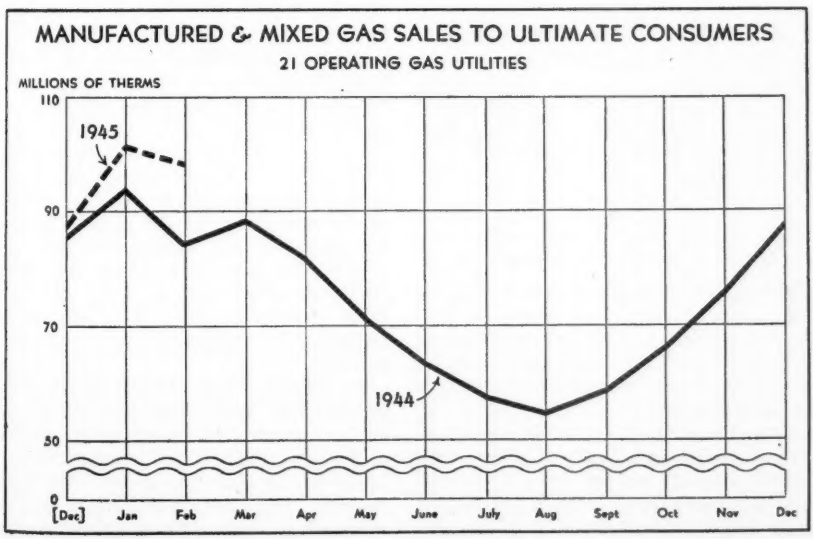
Operating revenues	$39,372,508
Operation	$14,806,805
Maintenance	2,284,599
Depreciation	2,709,512
Taxes—Federal income and excess profits (after reduction of $4,148,050 shown separately below)	3,058,746
Taxes—other	3,292,193
Net operating revenues	$13,220,653
Other income—net loss	45,361
Gross income	$13,175,292
Special charges of those portions of premium and expenses on redemption of bonds ($2,091,177) and of loss on sale of property ($2,056,873) which are equivalent to resulting reduction in Federal excess profits taxes	4,148,050
Interest and amortization	2,409,075
Amortization of plant acquisition adjustments	693,168
Net income	$ 5,924,999
Preferred dividend requirements	1,447,355
Balance for common stock and surplus	$ 4,477,644

next to the regular tax item or ("above the line"), it may substantially reduce the amount of net operating income. The latter item is used by state commissions as an occasional test of residential rates. If the ratio of this item to the rate base (adjusted net plant account plus working capital) is above 6 per cent, or whatever percentage is considered a fair return, a rate cut may be in order. Hence the utilities naturally prefer to place the special charge "above the line" so that earnings will not be overstated.

THE SEC, however, recently forced Virginia Electric & Power Company, in its $59,000,000 refunding operation, to change its *pro forma* income statement for 1944, as shown in the accompanying reproduction of the original and final statements. Net operating revenues were increased from $8,462,654 to $13,220,653 as a result of the SEC order; and deductions from gross income were increased from $3,102,243 in the first instance to $7,250,293 in the final prospectus. Not only was the $4,148,050 tax saving moved down into deductions from gross income (as a special charge-off against premium and expenses) but the $609,949 additional tax reduction resulting from 5-year amortization of emergency facilities was also deducted from taxes instead of being shown as a separate item.

These changes were made despite the fact that the income account was set up on a "*pro forma*" basis—intended to adjust nonrecurring items and to give the investor a picture of normal earning power. It is understood that the commission took the position that taxes should not be charged "above the line" in excess of the amount actually accruing during the period. There would be no special harm in this if the offsetting adjustments were placed immediately adjacent to the tax item before arriving at gross income. To put them "below the line" distorts the meaning of gross income and tends to confuse investors who are buying the new bonds. The yardstick by which one bond is compared with another is "number of times interest earned" or "number of times fixed charges earned."

The bankers who offer the new bonds



From the American Gas Assoc. Bulletin

are sufficiently interested to present the figures and comparisons on an adjusted basis, but the financial services are seldom as careful. In the upper income statement (page 700) "fixed charges" might be considered to be earned only 2.72 times; in the lower (final) statement, they would only be earned 1.81 times. Interest and regular amortization ($2,409,075), considered by itself, were earned 3.5 times in the first instance and 5.47 times in the final statement. The results are highly confusing unless the income statement is reconstructed for the purpose of determining coverage.

A COMPROMISE measure would have been to place the two special items ($4,148,050 and $693,168) as "other deductions" between net operating revenues and gross income. It will be noted that in the earlier income statement the item of $609,949 (buried in the final statement but explained by a footnote) was placed after net income, resulting in a special "balance" available for dividends. Presumably the company felt that this particular reduction in taxes should be credited back "below the line" since it was a proper amount to bring through to earned surplus and was included in taxes "above the line" in order to show what taxes and gross income would have been on a normal basis if the company had not been allowed under Federal tax laws to claim the amortization of these particular facilities over a 5-year period.

SEC Reports to Congress

THE SEC recently submitted its tenth annual report to Congress—a 184-page document with 88 additional pages of tables and charts. The report included a survey of the commission's activities in administering six statutes, but it also indulged in a discussion of financial conditions during the 1920's. During 1920-33, the commission pointed out, American investors bought $50,000,000,000 of new issues of which one-half became worthless before 1933. In contrast, the report cited the prevailing "new concepts of fair dealing, of adequate disclosure, and of the duties of management and insiders. The general acceptance of these ethical standards by the business community is reflected not alone in the policies and outlook of those subject to the commission's jurisdiction, but it is also evidenced in many respects in the practices of businesses not within the jurisdiction of the commission."

The report pointed out that while the commission has issued more than 2,000 formal orders under the various acts which it administers, only 100 petitions for judicial review of these orders have been filed. Of these, 84 resulted in either denial of the objections raised on the merits or dismissal of the petition by stipulation or on motion of the petitioners. The decisions in three concluded cases set aside the commission's orders in whole or in part, and 13 cases were pending at the end of the past fiscal year. More than 500 cases of civil action in the Federal District courts were instituted by or against the commission, but less than 2 per cent of these have resulted in decisions adverse to the commission.

The report stated that, under the Holding Company Act, some 53 electric and gas holding company systems with aggregate consolidated assets of nearly $16,000,000,000 have been registered. The commission concluded that as a result of its administration of the act and its "shrinkage" of the holding companies, in the future "the operating utility industry will have a greater ability to raise equity capital on a sound basis to finance its ever-growing needs, and investors who furnish the capital will receive their dividends direct, without being subjected to the expense and the risk of supporting an outmoded holding company organization."

During the past decade, it may be pointed out, there has been almost no equity financing by the utility companies under the jurisdiction of the commission, but to what extent this is due to the commission's regulatory activities, or to factors such as Federal taxes which are outside its control, is difficult to determine.

What Others Think

More Pertinent Paragraphs From Annual Reports

In a previous issue extracts were given from several of the recent annual reports of utility companies, as illustrations of the variety of important phases of the business upon which information is being made available to stockholders.

From additional reports which have been received, we have selected paragraphs touching especially upon contributions to the war effort, problems of postwar days, taxes and rate matters, value of interconnections, rural electrification, and benefit plans for employees. All these are subjects upon which the stockholder should be informed, and which also would be enlightening to any reader of these annual reports.

It is to be noted, for instance, in the report of *The North American Company* that the direct tie-in of electric service with war industry is simply but vividly explained:

> Our electric generating plants serving the very important industrial territories centering in Cleveland, Milwaukee, and St. Louis are actually part of thousands of factories producing vast quantities of military necessities.
>
> Joined by transmission and distribution networks through which power flows from our generators to their machines, we share their burdens and responsibilities, helping to sustain their records of production. . . .

Upon the question of taxes, it is stated that they have increased 106 per cent since 1939, and that tax charges of subsidiaries ranged as high as 28 cents of every dollar of operating revenue. It is then observed:

> The North American system, like other business-managed electric companies, is willing to pay its full share of the cost of government and of the cost of financing the war effort.
>
> However, it does object to discriminatory taxation—taxation which goes in part to finance and subsidize competitive Federal and municipal power plants which enjoy substantially full tax exemption.
>
> When government goes into business and competes with its own citizens it grants to itself many special privileges besides tax exemption, including little or no interest charges. Such subsidized competition, if allowed to continue and expand, may spread beyond the utility field and create serious threats to the freedom of all enterprise.

Then with respect to relations with government and its agencies this significant comment is made:

> The wartime performance of the North American system in doubling its power output and in supplying electric service at continually reduced average prices is evidence of a resourcefulness which can play an important part in the nation's postwar economy. We believe this performance is to a large extent characteristic of the electric utility industry.
>
> In the postwar period, however, like every other American business, large and small, the utility business can make its greatest contribution in public service only if given the fair opportunity that free enterprise requires.
>
> We recognize the need for public regulation of the utility industry, but it must be fair and reasonable if it is to accomplish a constructive purpose. We need the helpful coöperation of all regulatory authorities. We also need relief from unregulated government competition and from discriminatory taxes which contribute to the support of that very competition, all of which we believe are contrary to the best interests of employees, customers, investors, and the people as a whole.

In the report of *Duquesne Light Company* one reads that electric service, a vital component in the manufacture of the war materials which are produced in Pittsburgh, was more than ample for military and civilian needs. Then the following interesting statement is made about interconnections between electric utility systems:

> The advantages which result from inter-

connections between electric utility systems for the exchange of power have been further proved during the present period of heavier-than-usual system loads due to war production. Duquesne Light Company, which is interconnected with and can exchange substantial amounts of energy with each of its neighboring companies, operates interconnected with 10,000,000 kilowatts of generating capacity in systems west to Chicago and south to Florida.

The value of interconnections depends upon the fact that different companies do not as a rule have capacity reductions at the same time. Their advantage lies in the load diversity that exists between systems, the coördination of scheduled generating equipment maintenance which they make possible, and the pooling of reserves. One advantage is illustrated by the fact that Duquesne Light Company is currently, and by prearrangement, supplying a neighboring company with, at times, up to 30,000 kilowatts in advance of the completion of additional generating equipment by that company.

Reference is also made to two aspects of the company's affairs which are probably little known to the public generally:

Duquesne Light Company is one of 167 privately owned and managed light and power companies which are participating in the electric companies' national advertising program. In addition to advertising in magazines of national circulation, this group of companies sponsors "The Electric Hour," starring Nelson Eddy, on the Columbia network every Sunday afternoon at 4:30, Eastern War Time.

Fifteen Duquesne Light Company linemen were sent to the assistance of electric service companies in Rhode Island and New York in September, 1944, to aid in the reconstruction of facilities which were badly damaged by an Atlantic coast hurricane.

In the report of the *Pacific Telephone & Telegraph Company*, the huge investment in plant and service equipment is thus pointed out:

. . . There is no period throughout its entire history which is comparable to that of the last five years, 1940 to 1944, inclusive, in its tremendous expansion which, through its all-out war effort, has required gross plant additions aggregating more than $276,000,000, with the net result that at the end of the year the investment in its telephone plant had reached the huge total of $651,669,679, or one-third more than it was on January 1, 1940. The magnitude of this investment and the necessary continuance of its enlargement bespeak their own effect, both present and future, on our company's financial necessities. . . . As we now visualize our forthcoming work, our postwar requirements will be such that it will be necessary to make plant expenditures aggregating more than $175,000,000, an increase of more than $25,000,000 over the amount so estimated a year ago.

Comment is then made on the broad scale upon which the telephone business is conducted, the detail involved, and the importance of maintaining a strong financial and earning position:

Our operations, carried on over a far-flung territory, comprehend the handling of millions of transactions and, at the same time, *individualizing* each transaction. Each telephone call is, as it were, a separate package, as is each contact with our customers—be it installation or maintenance of service, business office, accounting, or service inquiry—each to be handled courteously and helpfully and in the full interest of our customers. The yearly total volume of our transactions runs into large figures, as do likewise the gross revenues, expenses, and the required investment. Our dollar margin available for return, however, is relatively small. The increasing costs of rendering the service and the continuing large plant expenditures necessary not only to provide for the telephone demand, but also to effect continued improvements in the service, impose, and will continue to impose, exacting financial requirements on our company. . . . While the management is ever alert in its efforts so to construct the property and so to conduct the operations of our company that there will be the most economical and efficient results, it cannot so function—and it believes that the public so recognizes—without a sufficiency of men, materials, and money—not just enough to "skimp by." Our capital structure and earning position, therefore, should at all times be such that a strong financial condition obtains, thus making it possible to meet whatever future demands and obligations may arise.

Tribute in well-chosen words is paid to the company's employees who are in the armed services:

Our company faces the difficult period ahead with that confidence, faith, and indomitable will-to-do which characterize so outstandingly the spirit of America. The millions of our gallant youth in our fighting forces—and we humbly bow to them—who have the toughest job to do, of whom our 4,682 men and women in the services are a part, pave the way for that which is to be, as do those on the home front whose devotion, loyalty, skill, and alertness have made possible our unsurpassed war production. We

in this great nation have gained our strength, and shall preserve it, by the understanding, tolerance, and the sympathetic consideration of others which produce our system of free enterprise and all that it comprehends in the inter-relations of a great people. The development of the telephone has created an instrument, conquering time, space, and distance. The telephone has played a vital part, and it will continue to do so, in cementing the common understanding which comes from the rapid and dependable transmission of the spoken word.

TURNING to the report of *General Telephone Corporation,* it is noted that attention is given to rural telephone service and a brief but comprehensive statement is made upon this phase of the business:

> The problem of furnishing adequate telephone service at reasonable rates to customers in rural areas has always been of prime importance to telephone companies. As a result, rural telephone service is more highly developed in the United States than in any other country in the world. It is estimated, based on spot checks, that telephone lines have been built into the rural regions to the extent that between 80 per cent and 90 per cent of the occupied farms in the United States are within reach of these lines, although less than half of these farms have availed themselves of telephone service. A large number of the exchanges of the companies comprising the General Telephone system are in rural areas and the companies in the past have all had aggressive programs of supplying service to the rural areas and soliciting new rural customers. There has been a substantial increase in such customers in the past several years; and new technical developments added to release of materials and man power in the postwar era should tend to accelerate expansion of this service and its economic development.

The matter of taxes is then covered in an equally enlightening manner, with special comment upon the excess profits tax as applied to public utility companies:

> The taxation of earnings from businesses done through corporate form presents increasingly difficult problems; according to the present tax structure of the country, such earnings are taxed against the corporation itself and, to the extent that earnings remaining after taxes are distributed in the form of dividends, they are again taxed against the owners of the stock. There is a growing recognition that this double taxation is a deterrent to the necessary obtaining of venture capital, which in turn is a necessary part of the American system of private enterprise.
>
> Regulated companies, such as telephone companies and other utility companies, are peculiarly and unequally, if not inequitably, affected by the incidence of the so-called excess profits tax. There is recognition of this fact but no practical method for alleviating that condition has been included in any tax legislation. The term "excess profits" as defined in the tax laws is a misnomer when related to the earnings of public utility companies. The term is used merely to denote one of the increments in determining the amount of Federal taxes payable. The excess profits taxes, the normal income taxes, and the surtaxes are but the result of an arbitrary tax formula which has no direct relationship to real earnings. It is necessary, therefore, in considering Federal taxes to evaluate such taxes as a whole and to regard them at the present as a feature of the nation's over-all wartime financial program.

Reference is made to the practical value of having local men of affairs as directors of the subsidiary operating companies, and also to the adoption of pension plans for employees, as well as mention of collective bargaining arrangements which have been entered into with union organizations:

> For several years past it has been the system policy to elect to the boards of directors of the operating companies a number (usually a majority of the boards) of outstandingly successful businessmen residing in the territory served. These men—there are forty-three of them—have given generously of their time and talent in directing the business of the operating companies. Their advice has been invaluable in the successful operation of the properties and their participation in the affairs of the respective companies has added prestige to the companies locally and has been of benefit to the whole system.
>
> All of the subsidiary companies have now adopted pension plans which in general are uniform in their provisions, under which all male employees reaching age sixty-five and all female employees reaching age sixty are retired. If they have accumulated at least twenty years of service with the company, they are entitled to pensions based upon their average annual pay for the ten consecutive years in which their compensation was highest and the number of years of credited service under the plan. The entire costs of the pensions are paid by the companies and funds therefor are deposited with two insurance companies for purchases of annuities upon retirement.
>
> Each of the major operating subsidiaries has entered into one or more collective bar-

VERY BAD PSYCHOLOGY, HENSHAW! LOOKS LIKE YOU'VE BEEN STRUCK BY *LIGHTNING*!"

gaining agreements with unions representing groups of its employees, in most cases by mutual agreement approved by the War Labor Board. In the few cases where agreements could not be reached, the cases were referred to the War Labor Board for further action.

In the report of the *Detroit Edison Company* very interesting details are set forth for both domestic and industrial electric service:

Domestic Electric Service: The population of our service area continued to grow during the year because of sustained war equipment production and the attraction of high factory wages in the Detroit area. Furthermore, average annual use per domestic customer, including farms, increased from 1,295 to 1,339 kilowatt hours, which is well above the national average use. Total sales to domestic users in 1944 amounted to almost one billion kilowatt hours, an increase of nearly 6 per cent over 1943. Less than 6 per cent of this electricity was delivered to our 35,000 farm customers. Nearly 95 per cent of all the farms in our service area have

electricity available to them. Our average farm customer uses 30 per cent more electricity than our average residence customer. . . .

Industrial Electric Service: According to War Production Board figures, the Detroit area stands first in the nation in volume of war supply and facility contracts, and, in value, nearly one and one-half times that of the next largest industrial area. Approximately 80 per cent of our total industrial energy sales in 1944 were taken by well diversified prewar plants, such as automotive manufacturers, machine shops, foundries, and steel products industries now largely engaged in war production. These concerns have formulated plans for quick reconversion to the production of their former peacetime products.

This company having been the center of moves by both the city of Detroit and the state utility commission to force rate reductions, and the question of Federal income taxes being involved, the matter was taken to court. The report gives this explanation of the situation:

The Rate Case: Apparently the city of Detroit has championed the idea that no utility should pay Federal excess profits taxes, but instead should avoid such war taxes through rebates to customers, or by added local taxes. The principal contention is that, under present Federal tax laws, such action takes only one-seventh of the full amount from the utility and six-sevenths from the Federal government. In our case the Federal excess profits tax would have been relatively large because of low prewar base period earnings arbitrarily required to be used in calculating this tax. . . . Your management feels that it must get court direction in such a novel and vital matter. There is country-wide interest in the outcome of our litigation, and rightly, not only because much of industry might be subjected to the same form of excessive and unreasonable burdens but because of the impact on the revenues of the United States government.

Comment is also made about the company's participating with other business-managed electric companies in sponsoring "The Electric Hour" radio program:

The Electric Hour: Your company has joined 159 other electric companies in sponsoring a program of national magazine and radio advertising which tells of the contributions of the privately owned electric utilities to the national welfare. The radio program is presented Sunday afternoons over the Columbia network as "The Electric Hour." Nelson Eddy is singer and master of ceremonies, with Robert Armbruster's orchestra. Spot local advertising is interposed in the program by Detroit Edison.

As a company formerly part of a holding company system, but now independent, *Idaho Power Company* in its annual report goes into considerable detail about the conduct of its business. It is all very readable and presents an informative picture of many angles probably not generally known to the average stockholder:

During the year increased wages were provided to our employees in accordance with the schedule of merit increases and to offset higher living costs, a rate reduction to our customers was put into effect, and our earnings adequately serviced our outstanding securities. Thus we kept faith with the principals to whom we recognize a sincere responsibility. These accomplishments were made possible by the splendid coöperation which we have enjoyed from regulatory bodies, from our employees, from our security holders, and from the public we are privileged to serve.

Without hindrance to the war effort Idaho Power Company and its employees have endeavored to contribute leadership to a program of agricultural and industrial research and scientific development to enable our territory to shift back after the war to peacetime pursuits with a minimum of maladjustments. This is the local application of a program which, applied nationally, can materially assist our country in embarking again upon a period of peacetime prosperity after victory.

Idaho Power Company ceased to be a subsidiary of a holding company and became an independently owned public utility in 1943. . . .

The affairs of the company are conducted by its officers and directors, all of whom are residents of the company's service area and identified with the business and professional life of the territory.

The Idaho Power report calls attention to various matters of interest to stockholders under the headings of "Company Management," "Expansion of Territory Served," "Electric Facilities and Their Location," and "Customer Total Reaches New High," and adds:

Over a period of many years Idaho Power Company has been a leader in farm electrification, which has become doubly important under the wartime necessity of increasing agricultural production. It is estimated that more than 80 per cent of the farms within the company's service area (approximately

double the national average) are electrified and their electric needs supplied by the company. . . .

Realizing that the public is interested in the various phases of our business, the company conducts advertising and publicity which are designed to inform and interpret not only the affairs of this institution, but the philosophy and practice of the American enterprise system. Such publicity has been strengthened by personal appearances of company officers and representatives before groups of citizens in all communities served by the company.

In addition to the usual financial statements and charts, there is also included in the report of the Idaho Power Company a most interesting pictograph map showing territory served by the company. Attention is paid to many employee benefits, such as pension plans, hospitalization, group life insurance and accident prevention, after which it is stated:

The territory served by the company is representative of diversified agriculture and its associated industries, by stock raising, lumbering, and mining, all of which are important in a peacetime economy. Prior to the war the company assumed leadership in its service area in the promotion of farm chemurgy, through which new crops and new industries have been pioneered and brought into being. . . .

Idaho Power Company has contributed towards a program of research and scientific development conducted by its own staff members in conjunction with other industries and the agricultural departments of our universities and colleges, in an effort to develop new uses for farm crops, new uses for the by-products of agriculture, and new crops for which there is most likely to be a peacetime demand and a satisfactory price. The program of farm chemurgy is one to which business and professional men, joined with agricultural people, can look for substantial benefits in years to come.

In addition to providing adequate and reliable electric service at costs consistent therewith, Idaho Power Company, its officers and employees, recognize a responsibility in developing a program of peacetime production with its resulting exchange of goods and services which will sustain us in our standard of living, meet the cost of necessary government, start the orderly liquidation of our tremendous Federal indebtedness, and enable the accumulation of savings. If Americans can reëstablish a sound relationship under which industry, agriculture, and labor can work together with an impartial government, surely we have the productive capacity, the ingenuity, and "know-how" to meet the challenge of peace as we have met the challenge of war.

THE report of *Southern California Edison Company, Ltd.*, among other matters touches upon future outlook and the institution of postwar plans at such time as the war situation permits of their determination:

In my report to you last year, I refrained from discussion of postwar plans because of the many uncertainties involved. Today, such discussion would seem even less timely. Our wars are yet to be won, the losses in lives are still to be counted, and the costs are still to be totaled. The effect of these and other factors on our national economy, on our postwar controls, regulations, and taxes, and on our international commerce and relations, requires continuing reappraisement. Your company does have postwar plans—for absorption of personnel returning from military establishments, for enlargement and continuing improvement of its service, and for continuing modernization and replacement of plant. But the timing and scope and extent of these plans may depend in a large measure on the philosophy as well as the action of government. These important policies are yet to be clarified, and the facts with which we must deal as a consequence thereof are likewise unknown.

Comment is also made upon the company's policy, established over a long period of years, of recognition of employees.

This covers a wide range of special plans and services:

The company is engaged in a systematic evaluation and classification of jobs for the purpose of determining proper and balanced compensation levels and is endeavoring in all other respects to continue, as in the past, a progressive and understanding attitude in its personnel relations and practices. Historically, for more than thirty-five years, a high degree of recognition of employees has been an ever-present policy of the company. In 1909 we instituted medical and hospitalization service on a very nominal cost basis. This service, which was one of the first established in the country by a major company on such a liberal basis, has continued through the years. Also, as early as 1919, there was instituted the first company pension plan. Other employee benefits have been provided through the Employee Benefit Fund and Employee Emergency Loan Fund and substantial sickness and disability allowances. The value of these policies is reflected in a high quality of loyalty and performance of duty in the entire organization. . . .

It appears to be not generally known that the electric utility industry did not contribute to or intensify the man-power shortage, but, on the contrary, has contributed to the relief of that shortage. A greatly increased public service has been performed with a substantial reduction in personnel. Your company is no exception to this general rule.

From the foregoing quoted paragraphs, it is apparent that anyone reading these annual reports will be well informed upon a variety of pertinent facts pertaining to the affairs of these utility companies.

—R. S. C.

A Chatty Book on an Old American Custom—. Listening in

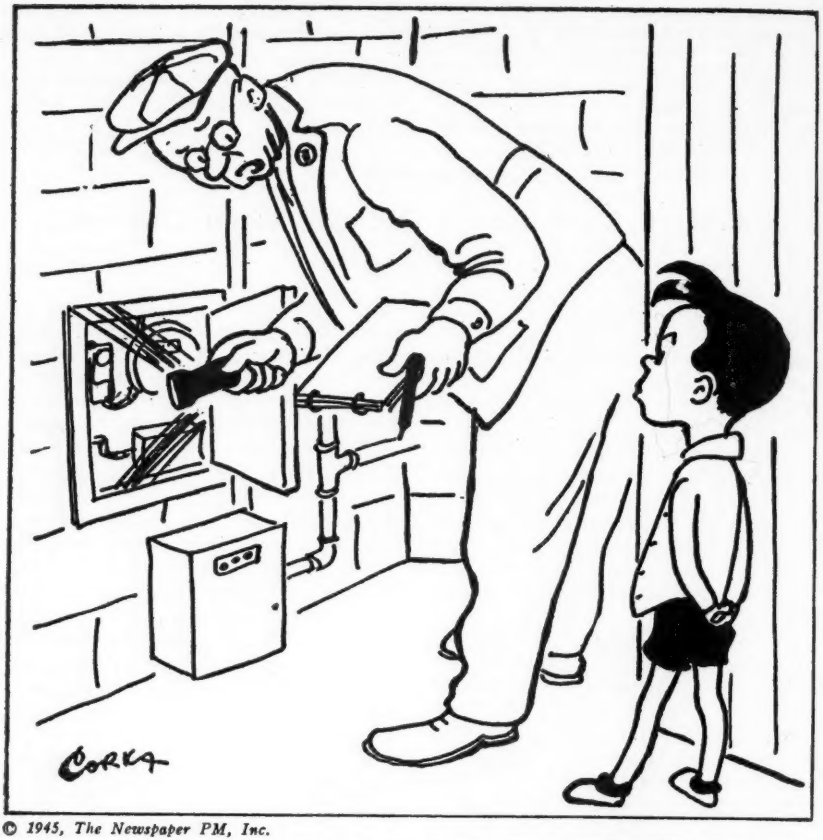
It is perhaps a commentary on our swift-moving era that the phrase "party line" mentioned to your present-day intellectual would call up a mental response entirely unconnected with the telephone business. Today's brighter children think of "party line" in connection with boresome ideology—the domination of the Communist party by the Stalinists, the recent domination of the German people by the Nazis, and so forth. But to a host of Americans slightly above combat age or older—especially those who have passed their youth in small towns—"party line" brings back memories as nostalgic as ukeleles strumming in honeysuckle time, the pungent odors and forgotten sounds of a blacksmith shop, and all the rest of the pleasant horse-and-buggy age that disappeared with World War I.

For this reason the youthfulness of Louise Baker, authoress of the recently published popular book entitled "Party Line," is somewhat surprising. Although the book is only incidentally autobiographical, Miss Baker does tell us (page 17) that she was born in May, 1909, which would make her a small girl indeed with a very sharp memory to have recalled the problems and chitchat of even the youngest social group which sang a popular song, "Jada, Jada." Some of the laughable illustrations by Stephen J. Voorhies show leg-of-mutton sleeves and peg-top trousers, which the authoress must surely have known only, as the lawyers say, "upon information and belief."

"Party line" is essentially a series of very light anecdotes about the people in the very small town in which Miss Baker spent her childhood—Mayfield, California. Running like a bright series of threads through all these anecdotes are the party lines connected to the manual switchboard of the old telephone exchange, presided over by Miss Elmira Jordan, the heroine and principal character of the book. For forty-two years Miss Jordan was an ever-present witness of Mayfield's destinies. Furthermore, like the mythical spinners of fate, she was not above taking a personal hand in the weaving of such destinies through the lines of her switchboard. Miss Baker sketches the character of "Miss Elmira," as she was known to the whole town, in the following excerpt from her opening chapter:

> . . . She regarded her profession as a calling—no pun intended. Had she been so inclined, Miss Elmira could have resigned her job and, with a few threatening letters to launch the enterprise, retired to a luxurious life of blackmail. But nothing so base as avarice would ever have uprooted her from her stool at the Bell Telephone Company. Nor would fire or flood have found her fleeing her post of duty. Certainly the earthquake that shook one brick wall away from the telephone office exposed Miss Elmira, her earphones only slightly askew, steadfastly plugging away at her switchboard. Only one cataclysmic blow was capable of eliminating Miss Elmira, and, alas, it fell four years ago—the dial system! It is to her credit that she was philosophical in this tragic climax to her career.

To those who have always lived in a big city with its more or less impersonal service, even during the earlier years of the telephone, the extent of Miss Elmira's highly personalized brand of service may seem incredible. She rang



"LOOK, KID, I AIN'T PREPARED TO ARGUE UTILITY VALUATIONS. ALL I DO IS GO AROUND AND READ METERS"

all party lines to announce new babies, strawberry festivals, lost and found articles.

She could track down a doctor for an emergency no matter how hard he tried to hideout. Wayward girls and erring husbands could hold no secrets from the ubiquitous "Miss Elmira." She became wedded to her profession only after the sole romance of her life, a "handsome" lineman, lost his life in a snowdrift while attempting to reopen a fouled communications circuit, thus making a double dedication to public service.

The local newspaper editor, throwing up his hands at the very thought of trying to engage in straight competition with such a babbling brook of community information, decided sanely that the best way for him to operate was to join forces. Since Miss Elmira's ethics precluded her from consenting to go on the payroll, a judicious dispensation of gifts and flattery enabled the enterprising editor to tap this source of information at will. Furthermore, since the families on each party line, by that very fact, had no secrets from each other, but no access to gossip on other lines, the

editor saw the opportunity of coördinating information derived through each by enlisting the aid of a sort of unofficial reporter on each of a dozen or more party lines.

"PARTY LINE" is not exactly an important book. But it will give anyone in the telephone business many a hearty chuckle. It is the sort of light thing which one takes on trains and which ought to be in a dentist's office—something that can be picked up and laid down without much loss of continuity. Miss Baker writes with a sure-footed professional sense of simplicity, brevity, and change of pace. On rare occasions her prose can be quite poetic as, for example, the following thumbnail commentary on her little home town of Mayfield: " . . . you have to be a part of it and listen to its heartbeat, preferably with a telephone for a stethoscope, to recognize its individuality."

Generally, however, the authoress shrewdly pitches her style to the business at hand — that of telling a series of humorous anecdotes and telling them well. Some of the details surrounding these various incidents seem just a little too "pat," the jigsaw pieces fitting too perfectly to convince a skeptical reader that the affair actually happened that way.

But, after all, Miss Baker's book does not purport to be nonfiction and as the old Irish proverb says, "Heaven winks at the truth if the tale is a merry one."

—F. X. W.

PARTY LINE. By Louise Baker. Whittlesey House, New York 18, N. Y. Price $2.50.

Notes on Recent Publications

THE MUNICIPAL YEAR BOOK. 1945. 1313 East 60th Street, Chicago 37, Illinois. $8.50.

This is the twelfth edition of "The Municipal Year Book." Advance notice indicates that it contains a wide variety of information upon municipal affairs, including personnel, finance, and activities—the latter including utilities. Many subdivisions are listed, under these general headings, touching details of miscellaneous nature in municipal matters in over 2,000 cities in the United States.

MUNICIPALITIES AND THE LAW IN ACTION. Proceedings of the 1944 War Conference of the National Institute of Municipal Law Officers. Edited by Charles S. Rhyne. National Institute of Municipal Law Officers, 730 Jackson Place, N. W., Washington 6, D. C. 1945. $10. Pp. 500.

This book, under 33 chapter headings, includes reports of committees and the addresses of individuals relating to many subjects of interest to those in the legal profession having to do with municipal affairs. One chapter covers the report of the Committee on Public Utilities, referring principally to the question of taxes, and to the activities of the Federal Power Commission, especially regarding certain cases affecting natural gas companies. Another chapter presents the report of the Committee on Municipally Owned Utilities. In this comment is made upon a trend toward acquisition of electric utilities by municipalities, due to disposal of properties by holding companies under urge of the "death sentence clause." Reference is also made to the influence upon this movement of the spread of governmental public power projects, such as Tennessee Valley Authority and Bonneville Power Administration.

PROGRESS PICTURE STORY OF SANTEE-COOPER. Compiled and edited by John A. Zeigler. South Carolina Public Service Authority, 1246 Main Street, Columbia, S. C. 1945. $5. Pp. 232.

The South Carolina Public Service Authority has issued a picture progress story of Santee-Cooper, the hydroelectric power and navigation project on the Cooper and Santee rivers. This project, which was financed by Federal funds at a cost of $48,000,000, and is owned by the state of South Carolina, has a generating capacity of 132,615 kilowatts and provides a 100-mile inland waterway from Charleston on the coast. This 230-page book, aside from a few pages of statistical data, is made up of reproductions of photographs taken from the start of the development to its completion. It furnishes a graphic pictorial story of the progress of this extensive construction job, some of the artistic shots of massive concrete structures being especially effective.

The March of Events

House Passes Rail Rate Bill

THE U. S. House of Representatives on May 4th passed, 176 to 40, a bill to allow railroads to charge the government full transportation rates. The measure, which was sent to the Senate, would abolish 50 per cent rates allowed the government in return for lands granted the railroads a century ago. Speakers on both sides of the issue agreed the bill would increase the Federal shipping bill by at least $20,000,000 a month.

Chairman Lea, Democrat of California, of the Commerce Committee, and other proponents said "simple justice" required the action, arguing that the railroads "have already paid their debt for this land."

Representative Gearhart, Republican of California, contended that by increasing the Federal bill the rates to other shippers would be reduced.

Representatives O'Hara (Republican, Minnesota), Poage (Democrat, Texas), and other opponents argued that the legislation "would represent an outright gift to the railroads at a time when they are making more money than at any time in their history."

Representative Pace, Democrat of Georgia, said the proposal would "cost the taxpayers $200,000,000 to $300,000,000 yearly just at a time when we are trying to reduce expenditures."

Proponents asserted, however, that much of this would be made up by increased railroad taxes and also said the legislation would still allow the government to negotiate preferential rates when possible.

FPC Engineering Bureau

ENGINEERING activities of the Federal Power Commission have been consolidated in a new bureau of power with headquarters in Washington, D. C. E. Robert de Luccia, a former lieutenant colonel in the Army Engineers, is chief, and Francis L. Adams, former regional administrator at Fort Worth, Texas, is assistant chief.

D. J. Wait has been named regional engineer in the New York field office.

Caffrey Approved

THE Senate Banking Committee last month approved the nomination of James J. Caffrey, New York, to be a member of the Securities and Exchange Commission.

Caffrey was nominated by the late President Roosevelt, but Chairman Robert F. Wagner, Democrat of New York, told reporters that President Truman "is well satisfied."

Caffrey was nominated for the unexpired term of Robert H. O'Brien, who resigned, and for a full term until June 5, 1950.

SEC Plea Dismissed

THE United States Supreme Court on April 30th dismissed a Securities and Exchange Commission petition involving a recapitalization plan of Long Island Lighting Company.

The SEC in a suit in lower courts sought to enjoin the firm, a New York holding company, from completing the plan under the New York state law. The SEC desired a stay in proceedings pending a determination by it whether rights of stockholders should be subject to reorganization standards of the Public Utility Holding Company Act.

The United States District Court for the Southern District of New York refused to issue an injunction on the ground that it lacked jurisdiction. The Second United States Circuit Court upheld this finding and SEC appealed to the Supreme Court.

The high tribunal in dismissing the petition announced merely that the case had become moot—that is, that there is now no further cause for court action. It ordered the circuit court judgment vacated and told the district court to dismiss the SEC complaint.

Merger Savings Expected

SAVINGS of approximately $250,000 annually in operating expenses, taxes, and other charges will be effected through the proposed merger of the so-called "Charleston group" of companies in the Columbia Gas & Electric Corporation system, according to testimony given before the Securities and Exchange Commission on May 7th by H. Edwin Olson, vice president of Columbia.

Companies proposed to be merged are Central Kentucky Natural Gas Company, Huntington Development & Gas Company, Cincinnati Gas Transportation Company, Point Pleasant Natural Gas Company, Warfield Natural Gas, and United Fuel Gas, with the latter the surviving company.

California

Power Plot Charged

U. S. Representative Helen Gahagan Douglas, Democrat of California, recently charged that the House Appropriations subcommittee on Interior Department appropriations had put a private power company "in the driver's seat" in California by eliminating from the Interior Department Appropriation Bill funds for construction of public transmission lines.

The subcommittee on April 24th had recommended a $1,000,000 slash in proposed construction expenses for the Central Valley project in California and entirely eliminated a request of $490,000 for initial work on the Kings river project.

In slicing the Central Valley appropriation, the subcommittee reported that the estimated over-all cost of that project had risen from $170,000,000 to more than $362,000,000. It recommended that the Bureau of Reclamation consider means of reducing rather than increasing its estimates.

Representative Jed Johnson, Democrat of Oklahoma, chairman of the subcommittee, denied his group had favored private companies. He said he resented "very deeply the suggestion that this committee has gone over bag and baggage to the private power company."

Representatives Jerry Voorhis and George P. Miller, Democrats of California, also assailed the committee's reduction in the Central Valley appropriation.

Representative Alfred J. Elliott, Democrat of California, had recommended to the subcommittee that it withhold the Kings river funds because Congress already had appropriated money for the same work to be done by the Army Engineers. He said his constituents did not want the Bureau of Reclamation to have anything to do with the project.

The subcommittee specifically disapproved items of $115,000 and $100,000 for planning a delta steam power plant and transmission lines. The two installations would cost $26,000,000 and $48,000,000.

"The proposed steam plant and transmission system would duplicate, if not destroy, existing tax-paying facilities and take much valuable property off the tax rolls to the detriment of many towns and counties in California," the subcommittee report said.

Urge City Transit Chief

APPOINTMENT of a manager of transportation for San Francisco's street railway system formally was requested recently in a resolution introduced before the board of supervisors.

Presented by Supervisor MacPhee, chairman of the finance committee, the resolution asked that Mayor Lapham and the city public utilities commission give consideration to establishing the position "on a parity with the manager of utilities."

"If necessary," the resolution stated, "we ask that the mayor use his emergency powers to accomplish this purpose."

MacPhee claimed that the action was not intended as criticism of Utilities Manager Cahill's direction of the street railway operation, but was prompted by a desire to bring about improvements in railway service.

The resolution referred to statements made by Cahill that the major cause for inadequate service has been lack of materials and man power for the repair of equipment. In contradiction, MacPhee contended that some of the needed materials can be purchased locally and that the work of railway carpenters, machinists, and blacksmiths is not fully used.

Studies Competitive Bidding

As a result of its experience with Pacific Gas and Electric Company's recent $80,000,000 refunding issue, for which there was competitive bidding, the state railroad commission has determined to conduct a study into the whole subject of competitive bidding for security issues.

A hearing has been called for June 27th. Questionnaires are being sent to all regulated utilities which have investments of more than $750,000, except steam railroads, asking why a policy of requiring competitive bidding should not be instituted.

The commission ordered competitive bidding in the Pacific Gas Case after the U. S. Supreme Court rendered a decision putting the company under the provisions of the Public Utility Holding Company Act and therefore subject to competitive bidding rules of the Securities and Exchange Commission. The state commission in the past has favored negotiated sales.

Seeks Water Rate Increase

A 15 per cent increase in municipal water rates was recommended recently by Mayor Lapham of San Francisco in his annual budget message to the board of supervisors. In advocating restoration of the 15 per cent reduction in water rates—made in the mayoralty election year of 1943—Mayor Lapham pointed to the need of establishing a fund out of water department surplus earnings for betterments and improvements to the system.

(Currently, surplus earnings are siphoned into the general fund and are used to help reduce the tax rate. In the 1944-45 fiscal year, the general fund benefited in the amount of $1,197,412, representing a saving to taxpayers of approximately 17 cents on each $100 of assessed valuation.)

"It seems logical," said the mayor, in his message to the supervisors, "that the water department be placed permanently on a pay-as-you-go basis, not only as to current operating costs but including betterments as well as replacements and extensions."

Connecticut

Senate Votes Antibias Bill

A BILL designed to outlaw racial discrimination in employment and publications or radio broadcasts was passed by a 25-to-10 vote on May 1st by the state senate.

The bill, which has become a party issue supported by Democrats, was expected to meet stiff opposition in the Republican-dominated house of representatives. Like the Ives-Quinn law enacted at the last session of the New York legislature, the bill provides for enforcement through a state board on fair employment practices, to be seated July 1st.

Under the bill the 3-member board would be empowered to hold hearings on alleged instances of discrimination and to issue orders and regulations to enforce the proposed law. The bill would forbid either employers or labor unions to discriminate against job applicants because of race, color, creed, or national origin. It also would make it illegal to publish or broadcast statements discriminatory to minority groups.

Kentucky

FPC Orders Company to Show Cause

THE Federal Power Commission recently directed Kentucky Utilities Company, Lexington, to show cause within sixty days why it should not be ordered to dispose of $6,556,514 in write-ups and other excesses of recorded cost over original cost carried in its utility plant accounts. In a report served on the company following a field examination made in coöperation with the state public service commission, the FPC staff recommended:

1. Kentucky Utilities eliminate $1,679,607 representing write-ups and other improper items by immediate charges to earned surplus and other specified accounts.

2. A plan be submitted for the disposition of $4,876,907 representing excess of purchase cost over original cost of acquired properties.

"Agreement has not been reached between Kentucky Company and the staff of the commission with respect to the recommendations," the order stated.

According to the staff report the original cost of the Kentucky Company's electric and common utility plant as of December 31, 1941, was $41,634,830.

Kentucky Utilities Company, a subsidiary of the Middle West Corporation, serves about 114,892 electric customers.

Maryland

Rate Dispute in Court

INJUNCTION proceedings were instituted in the circuit court on April 30th by the Rustless Iron & Steel Corporation on behalf of itself and other electric consumers in Baltimore to prevent the state public service commission from carrying out an order calling for the consideration of the Consolidated Gas & Electric Company's property as a whole in determining electric rates.

The plaintiff contended the order constituted an "undue, unreasonable, and unlawful discrimination in favor of Consolidated," and denied the plaintiff the equal protection guaranteed by the Fourteenth Amendment and the Maryland Bill of Rights.

Rustless contended the rates it must pay for electric current "are an important factor in determining the extent of its industrial and business activities in Maryland and its policies with regard to future expansion in Maryland." This is equally true of industries generally, it was alleged.

Massachusetts

Transit Network Asked

A DRASTIC overhauling of metropolitan Boston's transportation system, including construction of eight new rapid transit lines at a cost of $46,000,000 to help solve the mass commuter problem after the war, was recommended last month by a metropolitan transit

recess commission in a report filed with the state legislature and Governor Maurice J. Tobin.

The plans, evolved in years of study, would virtually eliminate commuter service of steam railroads and would create a metropolitan transit authority with complete public ownership of the Boston Elevated Company, which now serves a great part of the district.

Another legislative recess commission on postwar highways recommended last March a 6-year program, calling for $153,000,000 to modernize highways and prevent Boston from being strangled by traffic.

The commission on transit, reporting last month, said:

"It is our conviction that a system of main, balanced rapid transit lines extending through the heart of Boston out to and through the centers of population within the area under consideration, on which modern, attractive, comfortable, and speedy transit equipment can be operated, offers the most economical and efficient means for the concentrated mass movement required, to be supplemented by the modern versions of trackless trolleys and busses."

The commission and its engineers found that about 2,000,000 persons daily would benefit from such a unified transportation system and estimated that it could be established within five years.

The report advocates the maximum use of existing trackage and equipment to enable the changes to be made at the lowest possible cost, particularly for land taking.

The proposed rapid transit routes would operate electrically and to a great extent over the rights of way of the Boston & Maine, Boston & Albany, and New York, New Haven & Hartford railroads.

A fare allocation is expected to provide a profit of about $700,000 a year.

Minnesota

Gas Vote Decision Deferred

THE St. Paul city council last month voted to take under advisement the setting of a date for submitting the natural gas ordinance to the voters, with every indication it will be a year before the question is voted on.

The referendum became a necessary prelude to installation of natural gas in the city when the required number of persons signed petitions asking for a vote.

John Findlan, finance commissioner, said recently that no money was available for expense of a special election and that it would be necessary to declare an emergency in order to hold one.

William Parranto, commissioner of finance, commented that the opponents of natural gas effectively had postponed its introduction in the city for the coming heating season, since even if a special election is held it is too late to install conversion units in time for use next winter.

The council's decision to take no action at this time followed an appeal by Juls Anderson, proponent of natural gas, for holding the referendum at next year's general election April 30th, rather than at the primary March 12th.

The ordinance requires for adoption a majority of all votes cast at the election in which it is submitted.

Nebraska

Bill Made Law

L. B. 92, one of the public power bills which was a controversial measure in the early days of the state legislative session, was passed May 1st by the state unicameral with only two dissenting votes. It was signed by Governor Dwight Griswold on May 4th. The bill provides that reduction of bonded indebtedness by a public power district shall be one of the factors to be taken into account by a court of condemnation in determining the price in the event a municipality condemns a distribution system owned by a public power district. The vote was 33 to 2.

The bill was introduced by Senators Walter Raecke, John Mekota, and Dan Garber, and was the result of the study made by the legislative council's subcommittee on power. In its original form there were different interpretations. The League of Municipalities contended that it would work to the advantage of public power districts and against municipalities. The wording of the measure was changed to meet that objection.

It is further provided in the bill that after a public power district has paid off all its indebtedness it shall upon request of any municipality turn the distribution system over to that municipality without cost.

Power District Sustained

THE city of Kearney must start all over again if it wants to acquire, through condemnation proceedings, the local distribution facilities of the Consumers Public Power District, said the state supreme court on April

27th in sustaining a motion of the latter. Attorneys for the district had asked that it arrest further proceedings on appeal, that it reverse the judgment of the district court, and effectually dismiss and dispose of all antecedent proceedings in condemnation. As the city had also asked for a dismissal of the appeal, this finally disposed of the proceedings.

Judge Yeager held that the right of the city to condemn depends upon a new compliance with the governing law, that the opinion in May *v.* City of Kearney nullified the proceedings that had been taken, and the injunction then issued destroys the right of the city to claim any rights under the proceedings that had been instituted and carried on.

Three years ago the city started the proceedings, and upon securing condemnation approval by the voters, asked the supreme court to appoint a court of condemnation. This was done, and it fixed the value at $276,975. The Consumers appealed, but the district court sustained the award. The district then appealed to the supreme court, and it is to the proceedings embraced in the appeal that the motion recently sustained was directed.

The city council submitted an ordinance authorizing issuance of revenue bonds to pay for the property, but the voters defeated it. Notwithstanding this action the council passed an ordinance authorizing issuance of general obligation bonds. Charles E. May, a taxpayer, asked an injunction, which the supreme court granted.

The city agreed that it was without authority to issue general obligation bonds without a vote of the people, but insisted that the supreme court opinion should be interpreted to mean that the election at which condemnation was voted and that every other step in the condemnation process up to the invalid effort to issue bonds was regular.

In the May Case the supreme court held that the condemnation election was invalid for the reason that after it was held the council sought to issue general obligation bonds in violation of promises and pledges made to the electorate. Judge Yeager says that the conclusion announced in that opinion invalidated every step of the proceedings taken, and that the city cannot proceed further until another election is held.

New Jersey

Wage Boost Opposed

THE Public Service Coördinated Transportation Company of New Jersey opposed a proposed wage increase for its employees at a War Labor Board hearing in Washington, contending that a fair interpretation of the WLB local transportation wage policy did not warrant a further adjustment.

The Amalgamated Association of Street Railway and Motor Coach Employees, American Federation of Labor, had asked for an increase of 10 cents an hour. The WLB review committee recommended a 5-cent increase, which would provide a wage of 95 cents an hour.

William H. Speer, general attorney for the company, told the board that the proposed increase would be a violation of the board's own stabilization pattern and would start a new round of disputes that would pour in upon the board because they could not be settled by collective bargaining.

Tax Battle to Highest Court

THE battle between the city of Jersey City and the state legislature over a distribution formula for $15,276,000 in railroad tax interest went into its final round last month as the state supreme court handed the matter over to the court of errors and appeals for final decision.

Three justices of the supreme court said in a brief written opinion that they were "not completely in accord" on the constitutionality of three 1945 laws regulating the distribution of the interest, and that they had decided to dismiss Jersey City's challenge of the laws in such a manner as to facilitate decision by the errors court.

While the opinion did not mention the status of a stay obtained by Jersey City last January, which prohibits Homer C. Zink, state comptroller, from distributing the money under the new plan, a spokesman for the supreme court said unofficially that the dismissal of the appeal for the purpose of sending it on to the higher court nullified the stay.

Seeks Utility Law Reform

THE Independent Citizens League was recently reported to be making a study of the state's laws about public utility companies for the purpose of submitting a revision bill to the state legislature at its next session.

James Imbrie, executive director of the league, referring to a critical dissenting report filed several months ago by State Public Utility Commissioner Crawford Jamieson of Trenton, announced the league's plan in a letter to Board President Joseph E. Conlon of South Orange.

"It is an enigma to us," he wrote, "why you and Commissioner [John E.] Boswell of Ocean City should allow months to pass since Com-

missioner Jamieson filed his charges with the governor without you, as majority members, yourselves demanding a full investigation rather than making it necessary for an outside independent group of citizens to move in this direction."

Mr. Jamieson's dissenting report, saying that New Jersey utility rates were generally too high and the functions of the commission too loosely defined, was filed when Mr. Conlon and Mr. Boswell submitted the annual report of the board. Mr. Jamieson is holding over as a member of the 3-man commission until Representative D. Lane Powers of Trenton, recently appointed to replace him, resigns from his congressional seat.

New York

Again Challenges FPC Jurisdiction

THE state public service commission recently announced that it had reiterated its position in a dispute with the Federal Power Commission with respect to jurisdiction over the accounting methods of natural gas companies operating exclusively in New York state. The Federal body has required these companies to comply with its accounting rules, and the New York commission has protested this action as unwarranted interference with regulatory procedure in New York state and a duplication of efforts.

Replying to a recent statement on the subject by the Federal Power Commission, Milo R. Maltbie, chairman of the state commission, in a letter to Basil Manly, chairman of FPC, cited a series of recent decisions by the United States Supreme Court, including the decision in the Connecticut Light & Power Company Case. His letter said:

"These decisions clearly indicate that the aim of Congress in establishing the Federal Power Commission was (1) to regulate interstate commerce in gas and electricity because such interstate commerce 'cannot be regulated by the states,' and (2) 'to assist the states in the exercise of their regulatory powers, but not to impair or diminish the powers of any state commission.'

"This is the position which we, in our prior letter, suggested that your commission adopt. In view of the principles enunciated in these decisions, we see no need for any extended reply. The supreme authority has spoken. If your commission stays within the field outlined, we will have no cause for criticism, and the regulation of interstate and intrastate commerce will proceed without duplication of effort and expense."

Pay Case Remanded

THE National War Labor Board on May 4th returned to an arbitrator the wage case involving 500 employees of the United Traction Company, Albany. The board remanded the issue over a proposed voluntary wage increase to its New York regional board with instructions to advise the arbitrator appropriately "with respect to the policies of this board."

The NWLB found that the 5-cent hourly increase for operators and 4-to-10-cent boosts for nonoperating employees would lift their rates above the approvable wage brackets for an area of Albany's population.

Oregon

Utility District Planned

PRELIMINARY petition for the creation of the Linn County Peoples Utility District was filed in the offices of the state hydroelectric commission at Salem on May 1st.

The district would comprise virtually all of western Linn county, with the exception of the municipalities of Albany and Lebanon. The area of the district is 900 square miles, with a population of 23,110. The assessed property valuation is $20,000,000.

The purpose of the proposed district is to acquire and establish power facilities for the generation, distribution, and sale of electric energy to residential, commercial, industrial, individual, agriculture, and other consumers.

A preliminary report of the hydroelectric commission will be released June 1st, followed by a final report later.

Pennsylvania

Rural Electric Bill Passed

A BILL to curb rural electric coöperatives split party lines in the state senate early this month and led to a bitter split in the Philadelphia organization.

Senator Henry I. Wilson, Republican of Jefferson county, and eight other Republicans,

including Senators James A. Geltz and John M. Walker, Allegheny county, voted with Democrats against the bill, but four Philadelphia Democrats helped the majority Republicans to give the bill final passage.

Senator H. Jerome Jaspan, lone Philadelphia Democrat to oppose the bill, promptly resigned as party leader in his home ward, charging that leaders of the city organization are controlled by utilities. He said the measure would destroy rural electric coöperatives through strict state commission regulation.

Senate Kills FEPC Legislation

JUST to make 100 per cent sure no fair employment practice legislation would be enacted at this session of the state legislature, the Republican senate majority on April 30th buried in committee a duplicate of the Homer S. Brown Bill. The house bill was smothered in committee the previous week.

In a last-minute effort to revive FEPC, senate Democrats moved to discharge the committee on labor and industry from further consideration of the Rosenfeld-Dent-Holland Bill, a word-for-word twin of the Brown measure. The motion was beaten, 18 Democrats voting for it and 28 Republicans against.

Senator Charles R. Mallery, Republican of Blair, ridiculed the bill as "purely political."

Minority Floor Leader John H. Dent called the Homer Brown Bill "the one and only decent fair employment practice bill offered at this session." He emphasized the FEPC is not confined to the interests of Negroes, but to all minority racial and religious groups.

New Tax Powers

THE state senate on May 5th was ready to vote new tax powers for Pittsburgh and to freeze the city's real estate tax rate.

Republicans defeated four attempts to amend the Fleming Bill to permit the city to tax anything not taxed by the state, with certain exceptions, and placed it in position for final legislative passage.

As it stands, the Fleming Bill specifically exempts wages, sales, occupations, and real estate of public utilities from city taxation, and requires that half of the proceeds of new tax levies above $1,500,000 yearly be devoted to reduction of real estate taxes.

The companion Laughner Bill would make the present tax rate of 25 mills on land and 12½ mills on buildings the ceiling for future taxation.

Minority Floor Leader John H. Dent, Democrat of Jeannette, told the senate the program was "a monstrosity, conceived in iniquity and dedicated to chaos and political chicanery."

South Carolina

Power Company Rates Reduced

CUSTOMERS of the South Carolina Power Company of Charleston, which serves the lower part of the state, will save $233,500 annually by a utility rate reduction effective June 1st.

John C. Coney, state public service commissioner from the first district, announced last month the increase and a new financing program of the company.

The commissioner said that previous rate reductions to residential customers had resulted in homes served by the company paying 23 per cent less than the average price for residential electric service.

Denies Contracts Improper

THE state-owned $57,000,000 Santee-Cooper hydroelectric authority denied on May 2nd, in a statement to the state house of representatives, assertions in a recent house resolution that project construction contracts were being improperly awarded.

The statement complied with the resolution's request that Santee-Cooper report to the house why it had awarded contracts "without advertising for bids."

The statement from Santee-Cooper also denied an assertion in the resolution that damage to slopes protecting 17 miles of lake sides had become a "menace" that might result in property loss and "possible loss of life."

The Santee-Cooper authority "denies the statements made in the preamble of the resolution except" one declaring that the project was subject to the will of the legislature, the statement opened.

It continued:

"The authority has never been charged by any responsible party with irregularities in awarding contracts, collusion, loss of money, or fraud of any kind."

Texas

Intent to End Contract Filed

THE Houston city council last month extended the time for giving notice of intention to cancel the city's profit-sharing agreement with Houston Light & Power Company, notified United Gas Corporation of intention to cancel a similar agreement with that com-

pany, received bids on a water main, and conducted other business.

The city has until May 1st of each year to give notice to the utility company if it intends to cancel its profit-sharing agreement with the company. This period was extended until August 1st for this year only, by agreement with the company, the ordinance stated.

City Manager John N. Edy said that discussions between the city and company, regarding possible amendments to the agreement, and possible rate reductions, were not yet complete. Payments for this year under this agreement amount to $471,000, in addition to *ad valorem* taxes, and a payment of $54,000 in lieu of street lights, which could not be installed because of wartime restrictions.

On recommendation of W. Clinton Owsley, city utilities supervisor, the council voted to give notice of intent to cancel the city's profit-sharing agreement with United Gas Corporation. City Manager Edy said he concurred in this recommendation.

This agreement was begun in 1925 when the city granted a franchise to the company, and no payments have ever been made to the city under it, Owsley said.

Gas Group to Prepare Report

MEMBERS of the governor's committee on natural gas policy decided recently at Austin to prepare a report to Governor Coke Stevenson on May 30th.

By that time, Chairman Olin Culberson said, a survey of other states' plans to appear before the Federal Power Commission should be completed. FPC has scheduled a series of hearings on natural gas, designed to determine how far the Federal agency should go into its regulation.

The Texas committee has determined that combined appearances should be made by the state and representatives of the oil and gas industry, opposing Federal intervention in regulating production. The group, however, did not act upon Culberson's suggestion that the state legislature be asked to pass a resolution urging Congress to restrain the FPC to the regulation of interstate transportation of natural gas.

Rap Federal River Control

A RESOLUTION declaring opposition to the formation of additional Federal authorities, such as the Tennessee Valley Authority, was introduced in the state senate last month by Senator Ben Ramsey, who said his action was taken at the request of several Texas Congressmen.

Such authorities are undesirable because they are administered by commissions beyond the direct control of Congress, the resolution declared.

Washington

PUD Hurdle Crossed

JUDGE Charles H. Leavy, in Federal court at Tacoma, on April 30th stated that on the following Friday he would grant issuance of a resolution of public necessity in the Clark County Public Utility District's suit to condemn properties of the Portland General Electric Company, D. Elwood Caples, attorney for the Clark County District, announced recently.

Caples said that he was given a week in which to prepare and present a transcript of the full proceedings in the case. For this purpose, Caples said, hearing on the case was continued until May 4th. The issuance of the certificate is a matter of convention, he said, the hearing on evidence bearing on property valuation to come later.

Wisconsin

Natural Gas Bills

THE state assembly recently voted to send to its municipalities committee a bill easing restrictions on the introduction of natural gas into the state. Fifty assemblymen favored postponement, and thirty-six wanted action taken immediately. Four members were paired for and four against the delay.

The vote was on a bill giving the state public service commission broader powers over natural gas and removing the right held by any community on a proposed pipe line to veto introduction of the fuel into the area. Another bill, repealing the present natural gas tax, was previously sent to the legislature's joint finance committee.

Supporters of natural gas assailed Assemblyman Arthur Lenroot's motion to send the bill to a new committee as a method "of killing this important legislation by indirection and delay." Lenroot, supported by Assemblyman Vernon W. Thomson, Republican of Richland Center, insisted that municipalities had been given no opportunity to voice their opinions on the measure.

The bill and its companion tax repeal measure had three lengthy public hearings before Thomson's judiciary committee before the committee voted 6 to 5 for postponement.

The Latest Utility Rulings

Intrastate Sales of Interstate Gas Subject to FPC Jurisdiction

THE correctness of allocation methods of the Federal Power Commission in dealing with a company selling natural gas wholesale for resale, both intrastate and interstate, was examined by the Supreme Court in the Colorado-Wyoming Case. This is a companion case to Colorado Interstate Gas Co. *v.* Federal Power Commission, 65 S Ct 829. (See PUBLIC UTILITIES FORTNIGHTLY, May 10, 1945, p. 653.)

Colorado-Wyoming owns a line running from Cheyenne, Wyoming, to Littleton, Colorado, where it connects with the transmission system of Colorado Interstate, from which it purchases its gas supply. In the Colorado Interstate Case a reduction of $98,000 a year for the supply to Colorado-Wyoming had been upheld. In the present case the commission had ordered Colorado-Wyoming to reduce its wholesale rates by $119,000 a year, which, accordingly, would amount to a net decrease in revenues of $21,000 a year. The majority of the Supreme Court upheld the circuit court and the commission with respect to a reduction in rates of $98,000 a year since this merely reflected the reduction in supply cost, but as to the balance of the reduction the court reversed and remanded for further proceedings.

Sales of natural gas at wholesale made intrastate to distributors, the court held, are subject to the rate-making powers of the Federal Power Commission when the wholesale company obtains practically its entire supply from an interstate pipe line of a gas transmission company. Interstate commerce in natural gas brought into the state and sold to such a wholesale company for resale to distributors does not end until the gas enters the service pipes of the distributing company.

The findings of the commission as to allocation, the court ruled, were insufficient.

They contained certain ambiguities and inconsistencies. Although § 19(b) of the Natural Gas Act limits review and provides that the finding of the commission as to facts, if supported by substantial evidence, shall be conclusive, the court must first know what the finding is before it can give it that conclusive weight. *Colorado-Wyoming Gas Co. v. Federal Power Commission et al. 65 S Ct 850.*

Allocation of Natural Gas Costs between Regulated and Unregulated Business

THE Supreme Court, in upholding an order of the Federal Power Commission reducing rates of the Panhandle Eastern Pipe Line Company, found no error in the failure of the commission to make a formal allocation of cost or property between regulated and unregulated business. The company's activities embraced both wholesale service and direct industrial sales.

The commission had allocated to interstate wholesale business all earnings from the entire business in excess of a 6½ per cent return. All parties agreed

that property and cost allocation would be impractical and that some division of the apparent profit from direct industrial business had to be made. A fair division was said to be a matter of judgment and not mathematics. The company had treated its entire business as a unit and failed to keep accounts reflecting a segregation of properties and costs. It had also failed to insist on a segregation of property in its petition for rehearing.

The court held further that while the commission lacks authority to fix rates for direct industrial sales of natural gas, it may take those rates into consideration when it fixes rates for interstate wholesale sales, in view of the provisions of § 5(a) of the Natural Gas Act.

As in the case of the Colorado Interstate Gas Company, 65 S Ct 829, inclusion of producing and gathering facilities in the rate base, instead of determining the field price or actual field value of natural gas and allowing such price or value as an operating expense, was held to be proper. Inclusion of natural gas leaseholds in the rate base at cost instead of market value was also sustained.

A return of 6½ per cent on the rate base was held to be adequate where the cost of servicing long-term debt was 2.88 per cent and the cost of meeting requirements of preferred stock was 5.8 per cent, leaving a return of 12 per cent on common stock. *Panhandle Eastern Pipe Line Co. et al. v. Federal Power Commission et al. 65 S Ct 821.*

Release of Impounded Fund When Rate Order Set Aside and Case Remanded

THE supreme court of Utah held that an impounded fund was the property of a public utility company and that the commission should take the necessary steps to release it after the court had set aside a commission rate order and remanded the case to the commission. The fund had been impounded, pending review of the order, under a requirement that it be impounded "until final decision in this case."

The commission contended that the court merely set the order aside and sent it back for further consideration and proceedings, and that any further hearing was merely a continuation of the original case.

The court, interpreting the statute relating to stay of orders pending appeal, declared that the liability of the surety on a bond and the payment to the ratepayer out of moneys impounded are conditioned upon the order or decision of the commission being sustained by the court. Although the court did not sustain the charges made by the utility pending review, but in fact held that such charges were discriminatory, it had actually decided that the commission had not regularly pursued its authority.

Because in the rationale of the opinion the court found that certain contentions as to confiscatory rates should be overruled, it did not follow that the court determined that the rates charged by the utility were unjust, unreasonable, or confiscatory. That is not a judicial function. *Mountain States Telephone & Telegraph Co. v. Public Service Commission et al. 155 P(2d) 184.*

Reasonableness of Denying Telephone Service for Unlawful Use

AN application for an order directing a telephone company to restore service was granted by the New York Supreme Court, Richmond county, al-

though police had refused to approve restoration.

The telephone company urged, in opposition to the application, its practice or rule to the effect that whenever a subscriber's service is interrupted by the police, or whenever the police request termination of service upon an alleged violation of law, service will be terminated and not restored or new service furnished such subscriber until the police department has approved the application.

This rule, said the court, is a salutary one and was presumably adopted in the interest of coöperation with the police department in the suppression of crime. But, the court continued, the rule should be enforced only where there is reasonable probability or reasonable ground for believing that the service will be used for illegal purposes. Mere fears or suspicions unfounded in fact do not warrant its application.

The police department had been given an opportunity to appear in the proceeding, but it did not give factual reasons in papers submitted which would justify its disapproval of the application. No reasonable grounds were alleged for believing that telephone service would be used for illegal purposes. The opinions stated, said the court, were not substantiated by facts, nor did the papers indicate any reasonable probability of unlawful or illegal use of service. *Dees Cigarette & Automatic Music Co. Inc. v. New York Telephone Co. 53 NY Supp(2d) 651.*

Commission Jurisdiction in Acquisition Case Not Ended by Lapse of Time

OBJECTIONS by the Northwestern Wisconsin Electric Company to the issuance of a certificate of just compensation and terms and conditions in a municipal acquisition proceeding by the village of Centuria were overruled by the Wisconsin commission. The company objected that the commission was without jurisdiction to issue the certificate or to do any other act in the proceeding because of the failure of the village to pay the just compensation and otherwise to comply with the terms and conditions of the order fixing the same within the time prescribed by the order for so doing.

The company also contended that even if the commission had jurisdiction to issue the certificate, or otherwise to act in the proceeding, it would be improper and inequitable to direct the issuance of a certificate because the village failed to request an extension within the four months' period as fixed for such compliance and because such failure of the village had operated to the prejudice of the rights and interests of the company.

The village contended that the four months' period did not commence to run until the time for taking an appeal from a judgment of the circuit court affirming the commission's order. This would have allowed an additional sixty days. The commission was not convinced that this contention should be sustained since there was no ambiguity in the terms of the order, and when the commission spoke of the "date of final judgment in such action" it meant that date and not the date when time for appeal should expire.

Notwithstanding the decision on this point, the commission declared that it had jurisdiction in such proceedings until all of the things it was required by statute to do had been done. The following statement was made:

> The jurisdiction of this commission is created by statute. The jurisdiction thus created can be neither enlarged nor minimized by anything which the commission or anyone else may do or fail to do. The duty of the commission is exactly commensurate with the jurisdiction created and conferred by the statute. The commission can no more escape that duty than it can enlarge or minimize the jurisdiction commensurate therewith. . . .
>
> We think, therefore, that the jurisdiction of this commission did not end with its order fixing the just compensation and terms and conditions for the acquisition of the property here involved. Nor was its jurisdiction

ended upon the rendition of final judgment by the circuit court for Dane county approving that order, because there were other and different things yet to be done after that affirmance which the statute required the commission to do.

The failure and neglect of the village to comply with the terms and conditions of the order for a period of approximately three weeks subsequent to the four months' time prescribed, it was further held, had not operated to the substantial prejudice of the rights or interest of the company. *Village of Centuria v. Northwestern Wisconsin Electric Co. (2-U-1714).*

Necessity of Authority to Abandon Siding

THE Pennsylvania commission terminated an investigation which it had instituted for the purpose of determining whether a railroad company should file an application for approval of the abandonment of service on a spur or industrial siding. The company had objected that abandonment was governed exclusively by Federal law and that abandonment was justified because the industry served was no longer in operation. There was said to be no merit to the contention that the abandonment of an industrial siding is governed exclusively by Federal law. The Supreme Court, it was said, has held that under the provisions of the Interstate Commerce Act the authority of the Interstate Commerce Commission does not extend to the abandonment of spur, industrial, team, switching, or sidetracks located wholly within one state.

Since the industry served had ceased operations and requested removal of the siding, the commission held further that authorization from the commission was not necessary. The commission made the following statement:

> . . . we are of opinion and find that under the provisions of § 202(d) of the Public Utility Law, it is not necessary for a public utility to obtain a certificate of public convenience to discontinue service to a patron, and remove facilities used exclusively in furnishing service to that patron, where the patron requests the discontinuance of service or otherwise indicates that service is no longer desired and there are no crossings as defined by § 409 of the Public Utility Law involved or an application has been made to the public utility commission for the abolition of such crossings.

Pennsylvania Public Utility Commission v. Pennsylvania Railroad Co. (Complaint Docket No. 13389).

Other Important Rulings

THE Wisconsin commission, in authorizing the purchase of property of a small telephone company by a larger company which proposed to rebuild the lines, to furnish metallic circuits, and to replace most of the present pole line and wire with new material, imposed a condition that with the application of higher rates of the larger company to subscribers owning their own instruments these instruments should be maintained by the purchasing company and, when necessary, replacements would be made at no expense to the subscribers. *Re Home Telephone Co. (2-U-2024).*

A publisher of a newspaper is not required to accept an advertisement for publication, since the newspaper, in the absence of regulatory legislation, is not in the same category as common carriers or innkeepers but is essentially a private business, according to the supreme court of New York. *Camp-of-the-Pines, Inc. v. New York Times Co. 53 NY Supp(2d) 475.*

The court of appeals of Kentucky held that a commission order voiding a certificate because the grantee failed to commence operations within sixty days does not violate any constitutional rights, notwithstanding that the delay was occasioned by compliance with an order of Office of Defense Transportation not to commence operations until further notice. *Straight Creek Bus, Inc. v. Saylor, 185 SW(2d) 253.*

The Florida Supreme Court, in sustaining the validity of a statute authorizing the commission to grant franchises to operate ferries, as against a contention that it was a special or local law, stated that a law does not have to be universal in application to be a general law. *Cantwell v. St. Petersburg Port Authority et al. 21 So(2d) 139.*

The commission has authority under the Grade Crossing Elimination Act to reopen and review, on its own motion, its final determination of the matter of eliminating grade crossings, according to a ruling of the special term of the New York Supreme Court. *City of New York et al. v. Maltbie et al. 53 NY Supp (2d) 234.*

The Securities and Exchange Commission, in ordering the disposal of properties not retainable under § 11 of the Holding Company Act, declared that where evidence as to retainability of a gas system along with an electric system fails to show that substantial economies would be lost upon severance, in the light of offsetting benefits resulting from independent operation of the naturally competitive businesses, the gas utility system must be disposed of. *Re North American Co. et al. (File No. 59-10, Release No. 5707).*

The Oklahoma Supreme Court held that under the state Constitution the court, on appeal from the corporation commission, was required to review the evidence, and must sustain the order appealed from if it is supported by substantial evidence. The court upheld an order requiring a railroad to provide adequate protection for the traveling public at a certain intersection. *Chicago, Rock Island & Pacific Railway Co. v. Vogel et al. 156 P(2d) 620.*

The supreme court of Ohio held that under the provisions of § 8746-1, General Code, any railroad company may acquire, own, and hold capital stock and securities of corporations organized for or engaged in business as a motor transportation company or a common carrier by motor vehicle and may operate the properties, or any part thereof, of such corporations, and may enter into working arrangements and agreements with such corporations. Under such an arrangement or agreement, it held, the railroad company does not necessarily become a motor transportation company nor does the contracting motor transportation company thereby lose its character as a common carrier. *Cleveland, Columbus & Cincinnati Highway, Inc. v. Public Utilities Commission, 60 NE(2d) 166.*

A railroad was authorized by the Colorado commission to transport two carloads of coal between certain points free of charge where the shipments had been donated by operators on the line for use of various agencies of charitable institutions and were to be used solely for charity. *Re Denver & Salt Lake Railway Co. (Miscellaneous Docket No. 198, Decision No. 24267).*

The Pennsylvania commission canceled operating rights of a motor carrier for abandonment of operations without commission authorization, stating that such abandonment is not legally valid and that unauthorized abandonment is sufficient cause to work a forfeiture of rights granted. *Public Utility Commission v. Patz et al. (Complaint Docket No. 14019).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

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TITLES

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PUBLIC UTILITIES REPORTS

UNITED STATES SUPREME COURT

The Connecticut Light & Power Company

v.

Federal Power Commission

No. 189
323 US —, 89 L ed —, 65 S Ct 749
March 26, 1945

CERTIORARI *to United States Court of Appeals for the District of Columbia to review judgment affirming order of Federal Power Commission requiring electric company to comply with regulations under Federal Power Act; reversed with instructions to remand cause to Commission for further proceedings. For decision below, see (1944) 78 US App DC 356, 52 PUR(NS) 216, 141 F(2d) 14, which upheld Commission decision in (1942) 44 PUR(NS) 170.*

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(MURPHY, BLACK, and REED, JJ., dissent.)

APPEARANCES: Claude R. Branch, of Providence, Rhode Island, and Gay H. Brown, of Utica, argued the cause for petitioner; Assistant Attorney General Shea, of Washington, D. C., argued the cause for respondent; John E. Benton, of Washington, D. C., argued the cause for Public Utilities Commission of Connecticut et al., as amici curiae, by special leave of court.

Mr. Justice JACKSON delivered the opinion of the court: The Federal Power Commission has asserted jurisdiction to regulate the accounting practices of the Connecticut Light and Power Company. The Federal Power Act as amended in [August 26], 1935, 49 Stat 803, 838, Chap 687, 16 USCA §§ 792 et seq, 5 FCA title 16, §§ 796 et seq, declares a congressional policy concerning the business of transmitting and selling electric energy for ultimate distribution to the public, and states that regulation of "that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the states." Section 201(a), 49 Stat 847, Chap 687, 16 USCA § 824(a), 5 FCA title 16, § 824(a).

The company, incorporated by Connecticut, serving customers only in Connecticut and owning no utilities property outside of that state, is comprehensively regulated by the Connecticut Public Utilities Commission in accounting practices as in many other matters, and it challenges the jurisdiction of the Federal Power Commission.

The state of Connecticut, appearing amicus curiae, through its attorney general avers that this assumption of jurisdiction by the Federal Commission "represents an unwarranted and illegal invasion of the powers of the state to regulate its local distributing company, which powers were clearly to be preserved to the state under the provisions of the Federal Power Act." The Connecticut Public Utilities Commission joins with the National Association of Railroad and Utilities Commissioners also appearing as amicus curiae, and they contend that the Federal Power Commission's order regulating accounting practices exceeds any authority given by the Federal Power Act and intrudes upon the field which that act expressly reserved to local regulation.

The basic facts are not seriously in dispute. The company for some time prior to August 26, 1935, the effective date of the Federal Power Act, operated as a member of the Connecticut Valley Power Exchange, an interstate power pool which interchanged energy among certain systems in New York, Massachusetts, and Connecticut. Had such operation continued, the company would be subject to the act and to the Commission's order. Two days before its effective date and frankly for the purpose of avoiding Federal regulation the company rearranged its operations with intent to cut every connection and discontinue every facility whose continued operation would render it subject to the Federal Power Commission's control. The Commission conceded in its opinion and the government admits here the company's

right to do so.[1] But the Commission said petitioner's effort was "only a gesture" for while it cut certain connections "it did not cut other interconnections over which interstate energy flowed." Of those facilities which the Commission held subjected the company to the Power Act at the time it became effective the company has since divested itself of all but one, and on that one the Commission rests its present jurisdiction to control petitioner's accounting. But it also claims that its accounting orders were entitled to obedience up to the time of the abandonment of the other facilities and because of them.

The facilities on which jurisdiction is predicated are for two general types of operation, one being used in receipt of interstate power, the other for transmission of energy sold to a municipality which in turn sold some part of it for export from the state.

The only presently existing facilities said to confer jurisdiction are at Bristol. Here the petitioning company purchases energy from the Connecticut Power Company, which despite a confusing similarity of name is an entirely separate and unaffiliated concern. The petitioning company receives power at 66,000 volts from the lines of the Connecticut Power Company over a short tap line, owned by the Connecticut Power Company, which leads to petitioner's substation. There the energy is stepped down to 4,600 and 13,800 volts and transmitted thence over many circuits to consumers in and around Bristol. The substation includes all of the usual equipment, lightning arrestors, disconnects, oil circuit breakers, busses, stepdown transformers, and appurtenant structures of an outdoor substation; and in the substation building a synchronous condenser is owned and operated, as required by the supply contract, to maintain the power factor.

What is called the East Hampton connection, severed July 1, 1939, consisted of facilities by which the petitioner received energy from the Connecticut Power Company at 13,800 volts and transmitted it several miles to its Leesville substation where it was reduced to 4,600 volts and to other substations where it was reduced to 2,300 volts and supplied to customers. What is referred to as the Torrington-Winsted District connection, discontinued in June of 1941, was differently operated. Energy was purchased from the Torrington Electric Light Company, which in turn had purchased it from the Connecticut Power Company. Delivery was accepted by petitioner at the bus bar of the Torrington Company at low voltage, 2,300 volts, petitioner maintained a substation which stepped this voltage up to 27,600, at which it was transmitted about ten miles over its lines to a substation at Winsted where facilities were operated to lower the voltage to 4,600, whence it was put on distribution lines.

The Commission held in all three instances that such facilities of petitioner were "for the transmission of electric energy . . . as distinguished from local distribution thereof." (44 PUR(NS) 170, 172). It

[1] Cf. Re Twin State Gas & E. Co. (Fed PC 1940) 33 PUR(NS) 39, 40, where the Commission approved a public utility's sale of certain facilities even though the sale might have been "a step in the direction that eventually results in the vendor company obtaining a status other than that of a public utility within the jurisdiction of this Commission."

found that the energy received from the Connecticut Power Company and Torrington Company "regularly, frequently and for substantial periods of time included electric energy in substantial amounts transmitted from Massachusetts." Hence it concluded petitioner owned facilities for transmission of energy in interstate commerce and was a "public utility" under its jurisdiction by virtue of the act.

The other type of operation on which it predicated jurisdiction was terminated in February 1941. It consisted of sale of energy at wholesale to the borough of Groton, which operated a municipal distribution plant. The borough, with knowledge of the company, resold a portion of this energy to a corporation which transmitted it to Fishers island, a small island off Connecticut shore but territory of New York. There it was distributed to that small community at retail. When the Groton contract expired in 1940 petitioner refused to renew it unless the borough discontinued sales of energy destined for Fishers island. This change was required by the company avowedly to eliminate flow of its energy to New York and thus to remove one of the grounds on which the Commission has asserted jurisdiction.

The Commission held that from the effective date of the act to February 28, 1941, facilities owned by the company were used to convey electric energy to the borough of Groton "for the transmission and sale at wholesale of electric energy in interstate commerce" and that such facilities were for transmission of such energy "as distinguished from local distribution thereof." Hence the company was held to have been a public utility during the period of such operation and subject for that period to the jurisdiction of the Commission.

It is not denied, although the Commission's findings and opinion make no mention of the fact and appear to have given it no weight, that the predominant characteristic of the company's over-all operation is that of a local and intrastate service. It serves one hundred seven towns, cities, and boroughs of Connecticut with a total population of about 660,000 and in addition supplies substantially all the power used by local companies which serve communities of Connecticut having a population of 130,000. It owns no lines crossing the Connecticut boundary and does not connect with any other company at the boundary. It has no business other than Connecticut service for which it needs any facilities whatever, and if local distribution service were terminated, no remaining purpose or use of any kind is suggested for the facilities in question. Its purchases and sales, its receipts and deliveries of power, are all within the state. Its rates and its fiscal and accounting affairs are fully and so far as appears effectively regulated by the state of Connecticut.

The Federal Power Commission on January 7, 1941, issued its order requiring petitioner to show cause why it should not be held to be a "public utility" subject to the act and why it should not reclassify and keep its accounts according to the Federal Commission's uniform system. On May 15, 1942, it issued findings and decision. Rehearing was denied. The company then applied for the review by the court of appeals of the District of Columbia to which the statute enti-

tles it. Section 313(b) of the act, 49 Stat 860, Chap 687, 16 USCA § 8251(b), 5 FCA title 16, § 8251(b).

The court of appeals sustained the orders. (1944) 78 US App DC 356, 52 PUR(NS) 216, 220, 141 F(2d) 14. It held that: "The Federal Power Act obviously intends to confer Federal jurisdiction upon electric distribution systems which normally would operate as interstate businesses." It construed the "but clause" of the act, which we shall later consider, as "intended to make it clear that this [the Commission's] jurisdiction extends even to local facilities where the act provides for their regulation, as it does in the case of accounting practices." The court concluded that: "Therefore, whether or not the facilities by which petitioner distributes energy from Massachusetts should be classified as 'local' is not relevant to this case. The sole test of jurisdiction of the Commission over accounts is whether these facilities, 'local' or otherwise, are used for the transmission of electric energy from a point in one state to a point in another." We granted certiorari. (1944) 323 US —, 89 L ed —, 65 S Ct 50.

[1–3] The first question is whether the reviewing court acted under a misapprehension as to the meaning of the statute.

The jurisdictional and regulatory provisions of the Federal Power Act apply only to "public utilities," and the act provides that by "public utilities" it "means any person who owns or operates facilities subject to the jurisdiction of the Commission." Section 201(e), 49 Stat 848, Chap 687, 16 USCA § 824(e), 5 FCA title 16, § 824(e). These facilities are carefully defined. "The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." Section 201(b). Transmission and sale as used in this provision are further defined to mean respectively "transmission of electric energy in interstate commerce" and "sale of electric energy at wholesale in interstate commerce." And the act goes on to say: "electric energy shall be held to be transmitted in interstate commerce if transmitted from a state and consumed at any point outside thereof" and that sale of electric energy at wholesale means "a sale of electric energy to any person for resale." Sections 201(c), (d). Of course as preamble to all of these provisions stands the policy declaration that Federal regulation "of that part of such business which consists of the transmission of electric energy in intertsate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the states." Section 201(a).

Can it be said in that state of the statute that whether facilities are local is not relevant to this case? The court of appeals in returning an affirmative answer to this question noted that:

"There is a superficial inconsistency" between its position and the last quoted provision of the act. But it said that we, in Jersey Central Power & Light Co. v. Federal Power Commission, 319 US 61, 87 L ed 1258, 48 PUR(NS) 129, 63 S Ct 953, held this "limitation" "not to apply to the sections of the act which specifically give the Federal Power Commission jurisdiction over matters of financial arrangement, such as the accounting section which we are discussing here." This misapprehends our holding in the Jersey Central Power & Light Company Case. The line did not cross state borders and since it was wholly within one state, it was contended that the line was used for intrastate transmission and that the act did not apply although the line was used to transmit power in its course of exportation from the state. We denied this contention and said: "It is impossible for us to conclude that this definition means less than it says and applies only to the energy at the instant it crosses the state line and so only to the facilities which cross the line and only to the company which owns the facilities which cross the line. The purpose of this act was primarily to regulate the rates and charges of the interstate energy. If intervening companies might purchase from producers in the state of production, free of Federal control, cost would be fixed prior to the incidence of Federal regulation and Federal rate control would be substantially impaired, if not rendered futile." 319 US at pp. 71, 72, 48 PUR (NS) at p. 136. We held that the "primary purpose" of the 1935 amendments to the power act was to give the Power Commission control of sales of energy across state lines which had been held to be beyond the control of the state of export in Rhode Island Pub. Utilities Commission v. Attleboro Steam & Electric Co. 273 US 83, 71 L ed 549, PUR1927B 348, 47 S Ct 294. Here, however, the Federal authority to fix the sale price of the energy coming from Massachusetts in interstate commerce attaches and presumably has been or at least may be exercised pursuant to the Jersey Central holding before the energy reaches this company. What petitioner does or fails to do is only after the incidence of Federal regulation and can in no way frustrate it.

In the Jersey Central Power & Light Company Case on consideration of its facts we said: "We conclude, therefore, that Jersey Central is a public utility under this act." 319 US at p. 73, 48 PUR(NS) at p. 137. Such a finding made the provisions of the act apply to it. But the company contended, notwithstanding its status as a public utility, that it was carried out of that particular Federal regulation by the fact that the state regulated its security issues. We held that state regulation does not operate to exempt from the security provisions a company otherwise subject to the Commission's jurisdiction but that: "The sounder conclusion, it seems to us, is that this limitation is directed at generation, transmission and sale rather than the corporate financial arrangements of the utilities engaged in such production and distribution." Id. at pp. 74, 75. In other words, the policy admonition is to be heeded in determining whether particular facilities make their owner a "public utility" rather than in exempting from

specific regulatory provisions a company found to be a public utility. The Jersey Central Power & Light Company Case does not read the policy declaration out of the act as the court below assumed it to do.

Legislative history is illuminating as to the congressional purpose in putting these provisions into the act. As frequently is the case, this original bill was drafted by the counsel and aides of the agency concerned.[2] In its support Commissioner Seavey of the Federal Power Commission said to the House Committee, "The new title II of the act is designed to secure coördination on a regional scale of the nation's power resources and to fill the gap in the present state regulation of electric utilities. It is conceived entirely as a supplement to, and not as a substitution for state regulation."[3] Progress of the bill through various stages shows constant purpose to protect rather than to supervise authority of the states. In reporting a revised bill to the Senate the Committee on Interstate Commerce said, "Subsection (a) . . . declares the policy of Congress to extend that regulation to those matters which cannot be regulated by the states and to assist the states in the exercise of their regulatory powers, but not to impair or diminish the powers of any state Commission."[4] The Report of the House Committee on Interstate and Foreign Commerce in presenting the amended bill called attention to Rhode Island Pub. Utilities Commission v. Attleboro Steam & Electric Co. 273 US 83, 71 L ed 549, PUR1927B 348, 47 S Ct 294, holding that rates charged in interstate wholesale transactions may not be regulated constitutionally by the states, and expressed the purpose to give Federal jurisdiction to regulate rates of wholesale transactions, but not to give jurisdiction over local rates. It said:

"The bill takes no authority from state Commissions and contains provisions authorizing the Federal Commission to aid the state Commissions in their efforts to ascertain and fix reasonable charges. . . . The new parts are so drawn as to be a complement to and in no sense a usurpation of state regulatory authority and contain throughout directions to the Federal Power Commission to receive and consider the views of state Commissions. Probably, no bill in recent years has so recognized the responsibilities of state regulatory Commissions as does title II of this bill."

. . . . . .

"Subsection (b) confers jurisdiction upon the Commission over the transmission of electric energy in interstate commerce and the sale of electric energy at wholesale in interstate commerce, but does not apply to any other sale of electric energy or deprive a state of any lawful authority now exercised over the exportation of hydroelectric energy transmitted out of the state. As in the Senate bill no jurisdiction is given over local distribution of electric energy, and the authority of states to fix local rates is not disturbed even in those cases where the energy is brought in from another state."[5]

[2] Hearings, Senate Committee on Interstate Commerce on S 1725, 74th Cong 1st Sess 223.
[3] Hearings on HR 5423, House Committee on Interstate and Foreign Commerce, 74th Cong 1st Sess 384.
[4] Sen Rep No 621, 74th Cong 1st Sess.

If we consider the professions of the sponsors of this bill to have been in good faith, where are we to find them written into the act?

The policy declaration that Federal regulation is "to extend only to those matters which are not subject to regulation by the states" is one of great generality. It cannot nullify a clear and specific grant of jurisdiction, even if the particular grant seems inconsistent with the broadly expressed purpose. But such a declaration is relevant and entitled to respect as a guide in resolving any ambiguity or indefiniteness in the specific provisions which purport to carry out its intent. It cannot be wholly ignored.

The declared purpose might also be looked for in specific denials of power to the Commission, such as that found in § 204(f), 16 USCA § 824c (f), 5 FCA title 16, § 824c (f) which provides that its controls, relating to issuance of securities, shall not extend to a public utility operating in a state under the laws of which its securities are regulated by a state Commission. But such exemptions from particular regulations apply only to companies found in general to be subject to Federal regulation and do not protect the state's general control over its local utilities.

The assurance which the sponsors of this legislation expressed as to protection of the general jurisdiction of a state over electric utilities of this character either is not given effect by this act at all, or it is to be found in the words of § 201(b), "but shall not have jurisdiction, except as specifically provided in this Part and the Part next following, . . . over facilities used in local distribution. . . ." The court below, following a statement in Hartford Electric Light Co. v. Federal Power Commission (1942) 46 PUR (NS) 198, 131 F(2d) 953, held that this "but" clause "is intended to make it clear that this jurisdiction extends even to local facilities where the act provides for their regulation, as it does in the case of accounting practices." This seems to get the cart before the horse, for whether the act provides for such regulation depends on whether the facilities are under the jurisdiction of the Commission; the Commission's jurisdiction does not depend on some independent application of the regulatory provisions. But the cited decision, pointing out that one of the several types of facilities mentioned as exempt in the "but" clause, i. e., those "used *only* for transmission in intrastate commerce," could not possibly be used for interstate transmission, rejected the whole provision to avoid a "foolish interpretation." It concluded, "The 'but' clause then shows up not as one reducing jurisdiction but as a negatively worded confirmation of the Commission's jurisdiction, in certain circumstances, over the facilities mentioned in the 'but' clause."[6] The

[5] HR Rep No 1318, 74th Cong 1st Sess 7, 8, 27.

[6] The statement was not decisive of the result, which rested on an alternative ground; and the court did recognize need for the further step of finding that the generating facilities were used as facilities for interstate wholesale sales, and therefore were within § 201(b). The court below failed expressly to find existence of jurisdictional facilities under § 201(b). The quoted statement reads in full:

"Moreover, among the facilities described in the 'but' clause of § 201(b), are those used 'only for the transmission . . . in intrastate commerce'; as such facilities could not possibly be among those used for interstate transmission or interstate wholesale sales, the 'but' clause becomes foolish if interpreted as carving out of the authority granted in the earlier

Commission takes much the same position here.

It is hard for us to believe that Congress meant us to read "shall have jurisdiction" where it had carefully written "but shall not have jurisdiction." The command "thou shalt not" is usually rendered as to forbid and we think here it was employed without subtlety or contortion and in its usual sense. If otherwise in doubt this provision should be read in harmony with the policy provision. So read its terms seem plainly to state circumstances under which the Commission shall not have jurisdiction. As such it is the provision which loomed importantly in the minds and speech of its sponsors, perhaps was necessary to get the bill passed, and is one which the Commission must observe and the courts must enforce.

This bill came before Congress as prepared by the staff of the Commission, couched largely in the technical language of the electric art. Federal jurisdiction was to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental test. Technology of the business is such that if any part of a supply of electric energy comes from outside of a state it is, or may be, present in every connected distribution facility. Every facility from generator to the appliance for consumption may thus be called one for transmitting such interstate power. By this test the cord from a light plug to a toaster on the breakfast table is a facility for transmission of interstate energy if any part of the load is generated without the state. It has never been questioned that technologically generation, transmission, distribution and consumption are so fused and interdependent that the whole enterprise is within the reach of the commerce power of Congress, either on the basis that it is, or that it affects, interstate commerce, if at any point it crosses a state line. Such a broad and undivided base for jurisdiction of the Power Commission would be quite unobjectionable and perhaps highly salutary if the United States were a unitary government and the only conflicting interests to be considered were those of the regulated company.

But state lines and boundaries cut across and subdivide what scientifically or economically viewed may be a single enterprise. Congress is acutely aware of the existence and vitality of these state governments. It sometimes is moved to respect state rights and local institutions even when some degree of efficiency of a Federal plan is thereby sacrificed. Congress may think it expedient to avoid clashes between state and Federal officials in administering an act such as we have here. Conflicts which lead state officials to stand shoulder to shoulder with private corporations making common cause of resistance to Federal authority may be

part of the same sentence the facilities described in the 'but' clause. Such a foolish interpretation is avoided by giving effect to a phrase in the 'but' clause, i. e., 'except as specifically provided in this Part or the Part next following [§§ 824–825r of this title].' The 'but' clause then shows up not as one reducing jurisdiction but as a negatively worded confirmation of the Commission's jurisdiction, in certain circumstances, over the facilities mentioned in the 'but' clause. In other words, the 'but' clause is to be construed as if it read: 'Wherever it is so specifically provided in Parts II and III, the Commission shall have jurisdiction over the facilities used for generation for local distribution, for intrastate transmission, etc.'" Hartford Electric Light Co. v. Federal Power Commission, 46 PUR(NS) at p. 209, 131 F(2d) at p. 962.

thought to be prejudicial to the ends sought by an act and regulation more likely to be successful, even though more limited, if it has local support. Congress may think complete centralization of control of the electric industry likely to overtax administrative capacity of a Federal Commission. It may, too, think it wise to keep the hand of state regulatory bodies in this business, for the "insulated chambers of the states" are still laboratories where many lessons in regulation may be learned by trial and error on a small scale without involving a whole national industry in every experiment.

But whatever reason or combination of reasons led Congress to put the provision in the act, we think it meant what it said by the words "but shall not have jurisdiction, except as specifically provided in this Part or the Part next following . . . over facilities used in local distribution." Congress by these terms plainly was trying to reconcile the claims of Federal and of local authorities and to apportion Federal and state jurisdiction over the industry. To define the scope of state controls, Congress employed terms of limitation perhaps less scientific, less precise, less definite than the terms of the grant of Federal power. The expression "facilities used for local distribution" is one of relative generality. But as used in this act it is not a meaningless generality in the light of our history and the structure of our government. We hold the phrase to be a limitation on jurisdiction and a legal standard that must be given effect in this case in addition to the technological transmission test.

Nor do we think the exemption of "facilities used for local distribution" exempts only those which do not carry any trace of out-of-state energy. Congress has said without qualification that the Commission shall not, unless specifically authorized elsewhere in the act, have jurisdiction "over facilities used in local distribution." To construe this as meaning that, even if local, facilities come under jurisdiction of the Federal Commission because power from out of state, however trifling, comes into the system, would nullify the exemption and as a practical matter would transfer to Federal jurisdiction the regulation of many local companies that we think Congress intended to leave in state control. It does not seem important whether out-of-state energy gets into local distribution facilities. They may carry no energy except extra-state energy and still be exempt under the act. The test is whether they are local distribution facilities. There is no specific provision for Federal jurisdiction over accounting except as to "public utilities." The order must stand or fall on whether this company owned facilities that were used in transmission of interstate power and which were not facilities used in local distribution.

[4] Since the court of appeals considered irrelevant the jurisdictional test which we find to be imposed by Congress, the inquiry on review has not proceeded under a correct rule of law and it follows that the judgment of the court of appeals must be reversed.

[5–8] Whether the Commission's decision was reached under the same misapprehension of the law of its jurisdiction is not made so clear from its findings or opinion. Of course under the act "The finding of the Commission as to the facts, if supported by

substantial evidence, shall be conclusive." Section 313(b). The Commission has found that each of the facilities in question is "used for the transmission of electric energy purchased as aforesaid from the Connecticut Power Company, as distinguished from local distribution thereof." It has not, however, made an explicit finding that these facilities are not used in local distribution and we are in doubt whether by application of the statute as herein construed it could have done so. We have said, and it is applicable to this case, that: "Where a Federal agency is authorized to invoke an overriding Federal power except in certain prescribed situations and then to leave the problem to traditional state control, the existence of Federal authority to act should appear affirmatively and not rest on inference alone." Yonkers v. United States (1944) 320 US 685, 692, 88 L ed 400, 404, 52 PUR(NS) 504, 509, 64 S Ct 327; Florida v. United States (1931) 282 US 194, 211, 212, 75 L ed 291, 301, 302, 51 S Ct 119; cf. Palmer v. Massachusetts (1939) 308 US 79, 84, 84 L ed 93, 97, 31 PUR (NS) 242, 60 S Ct 34, 41 Am Bankr Rep(NS) 134; Federal Trade Commission v. Bunte Bros. (1941) 312 US 349, 351, 85 L ed 881, 883, 61 S Ct 580. Nothing except explicit findings excluding the grounds of state control gives assurance that the bounds of Federal jurisdiction have been accurately understood and fully respected, and that state power has been considerately and deliberately overlapped.

The findings and opinion of the Commission leave us in doubt, to say the least, as to whether what we consider limitations on the jurisdiction of the Commission were so considered by it. The only specific reference to the subject is the statement that: "Respondent's contentions that it is subject to regulation by the Public Utilities Commission of the state of Connecticut and therefore not subject to the regulation provided by the Federal Power Act must be rejected," citing Northwestern Electric Co. v. Federal Power Commission (1942) 43 PUR (NS) 140, 125 F(2d) 882, and Re Hartford Electric Light Co. (1941) 2 Fed PC 502, 44 PUR(NS) 515, affirmed (1942) 46 PUR(NS) 198, 131 F(2d) 953. In both of those cases factual differences in reference to the status of the company as a public utility were involved, and we agree with the Commission that once a company is properly found to be a "public utility" under the act the fact that a local commission may also have regulatory power does not preclude exercise of the Commission's functions. Cf. Northwestern Electric Co. v. Federal Power Commission (1944) 321 US 119, 88 L ed 596, 52 PUR(NS) 86, 64 S Ct 451. But such a rejection of state control as grounds of exemption must be preceded by the finding, giving due weight to the policy declaration in doubtful cases, that the company in question is a "public utility" by reason of ownership of facilities not used in local distribution.

In determining this the Commission announced and applied a rule which appears to be one of law as to interstate transmission: "Such transmission, in our opinion, extends from the generator, where generation is complete [citing Utah Power & Light Co. v. Pfost (1932) 286 US 165, 181, 76 L ed 1038, 1046, 52 S Ct 548] to the

point where the function of conveyance in bulk over a distance, which is the essential characteristic of 'transmission,' is completed and the process of subdividing the energy to serve ultimate consumers, which is the characteristic of 'local distribution,' is begun [citing Southern Nat. Gas Corp. v. Alabama (1937) 301 US 148, 155, 81 L ed 970, 975, 57 S Ct 696; and East Ohio Gas Co. v. Tax Commission (1931) 283 US 465, 471, 75 L ed 1171, 1175, 51 S Ct 499]." (44 PUR (NS) at p. 179).

The Southern Natural Gas Corporation and East Ohio Gas Company Cases both involved natural gas transportation into a state and sales of gas at retail therein. Each was a tax case in which the state asserted that the sales within the state constituted an intrastate business which in one case would support a state levy of an annual franchise tax based on the actual amount of capital employed in the state; and in the other, an excise tax based on gross receipts from the business within the state. The companies each contended that sales made to consumers within the state were still within interstate commerce and hence there was no state jurisdiction to tax. In neither case was this court required to determine the exact point at which interstate commerce ceased and intrastate commenced. It was required to find only some "doing of business" within the state in order to sustain the constitutionality of the statutes involved. In both cases it upheld the power of the state to tax and in both held that the distribution at low pressure was a local business for taxation purposes as distinguished from transmission in interstate commerce. But a holding that distributing gas at low pressure to consumers is a local business is not a holding that the process of reducing it from high to low pressure is not also part of such local business. In so far as the Commission found in these cases a rule of law which excluded from the business of local distribution, the process of reducing energy from high to low voltage in subdividing it to serve ultimate consumers, the Commission has misread the decisions of this court. No such rule of law has been laid down.

Bnt for such an erroneous view of the law established by our decisions it seems doubtful if the Commission would have reached the conclusion that it did upon this record. Nor is it clear that if it were reached it would be supported by substantial evidence. Expert testimony received by the Commission on the subject from the Commission's own experts seems to have been predicated upon the Commission's understanding of the law. It is not for us to make an original appraisal of the facts. We do not therefore undertake to decide as an original matter whether the facilities in question are or are not facilities which can subject the company to the act.

Nor do we undertake to pass upon the contention of the government that even if the present facilities do not constitute a sufficient basis for Federal jurisdiction the operation of other facilities since abandoned subjects the company to the accounting order of the Commission for the period of January 1, 1937, when it became effective, until June 1, 1941 or some other date, depending on the facility found to be the basis of jurisdiction. The company contends that to make it install

an expensive system of accounting for a period that was short and has already expired would be a mere waste of time and money and would be of no practical benefit. The Commission contends that the accounting requirements and information would tend to discourage further write-ups and inflation of accounts and would amount to "regulation by the informatory process." It contends that this company has been guilty of accounting abuses in the nature of write-ups and the creation of fictitious surpluses which would be eliminated or at least discouraged by an application of its uniform system of accounts. The company denies that such abuses exist. It is not, however, contended that Congress has conferred any jurisdiction upon the Commission to reach accounting abuses when and if they exist except as to companies which own facilities subject to the jurisdiction of the Commission. In other companies the correction of these abuses, if they exist, is left to the state government, which has this company completely within its power and whose constituents are the sufferers by any abuses that may exist. We will not undertake to make an original finding as to jurisdiction for a period, any more than as to jurisdiction at the present time.

[9, 10] Another contention made by the company may be shortly disposed of. It is contended that the volume of energy passing over certain of these facilities is insignificant in proportion to the total. Only about one-fifth of one per cent of all the energy received and generated by the company throughout the state of Connecticut was transmitted out of the state during the time of the connection of Fishers island with the borough of Groton. Congress appears to have left to the Commission's sound administrative discretion to determine whether or not to assert its authority in such situations. Congress annually receives a report of the Commission's work and appropriates the funds for its continuance. If it thinks the Commission is over-extending its attention to trivial situations it has ready means of control in its hands. The wisdom of its work is not our concern, but only its legal justification. We do not find that Congress has conditioned the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved, and we do not think it would be appropriate to supply such a jurisdictional limitation by construction.

For the reasons stated, the judgment of the court of appeals is reversed with instructions to remand the cause to the Federal Power Commission for further proceedings consistent with this opinion.

Reversed.

Mr. Justice Rutledge concurs in the result.

Mr. Justice MURPHY, dissenting:

The findings and opinion of the Federal Power Commission in this case make clear that they are substantially and reasonably rooted in fact and law and that proper respect has been shown for jurisdictional limitations. Remand of the case to the Commission for further consideration thus can only serve to produce needless delay and to force the Commission to make certain minor and unnecessary changes in its written opinion. Cf. dissenting opin-

ion in Securities and Exchange Commission v. Chenery Corp. (1943) 318 US 80, 95, 87 L ed 626, 637, 47 PUR (NS) 15, 63 S Ct 454.

The basic jurisdictional fact necessary to sustain the imposition on petitioner of the Commission's accounting standards is that petitioner be a public utility within the meaning of the Federal Power Act. In the setting of this case petitioner must thus be found to own or operate facilities for the "transmission of electric energy in interstate commerce." Section 201 (b). Nowhere in the act has Congress defined "transmission" or "facilities" other than to say in § 201(c) that "electric energy shall be held to be transmitted in interstate commerce if transmitted from a state and consumed at any point outside thereof." The Commission therefore has the duty in the first instance of interpreting and applying these terms to the factual situation confronting it. A court's function in reviewing this jurisdictional determination is necessarily limited to ascertaining whether that determination has warrant in the record and a reasonable basis in law, giving due weight to the fact that the Commission is an expert body designated by Congress and specially equipped to grapple with the highly technical problems arising in this field. National Labor Relations Board v. Hearst Publications (1944) 322 US 111, 130, 131, 88 L ed 1170, 1184, 1185, 64 S Ct 851.

The Commission here has found that petitioner owns and operates an electric utility system in the state of Connecticut. It is undisputed that electric energy generated in Massachusetts is transmitted over the wires of other companies to petitioner's facilities at Bristol, Connecticut. In order to transmit power economically for such a long distance, it is necessary to raise the voltage and reduce the current in Massachusetts as the energy starts its interstate journey. But the high voltage needed for transit purposes cannot be utilized by consumers. It therefore is necessary to employ apparatus at the receiving end of the interstate transmission to lower the voltage. Petitioner accordingly maintains step-down transformers and substation facilities at Bristol for that purpose. After the voltage is lowered, the energy is subdivided and distributed over petitioner's wires to consumers in and around Bristol.

The Commission concluded that the functions of the Bristol step-down transformers and substation facilities constitute transmission of energy in interstate commerce since it felt that, in its opinion, such transmission "extends from the generator, where generation is complete, to the point where the function of conveyance in bulk over a distance, which is the essential characteristic of 'transmission,' is completed and the process of subdividing the energy to serve ultimate consumers, which is the characteristic of 'local distribution,' is begun." (44 PUR (NS) at p. 179). In other words, the Commission viewed the interstate transmission as complete only after the energy is converted back into a form suitable for local distribution and use and the facilities used for such conversion purposes are necessarily facilities for interstate transmission.

The jurisdictional determination of the Commission must therefore stand or fall upon the validity of its analysis

of when long-distance transmission of electrical energy across state lines is at an end. Only if we can point to an absence of any substantial evidence to support the Commission's view or if we can find legal or statutory principles compelling the opposite view can we justifiably say that the Commission had no jurisdiction in this case or that remand should be made to the Commission for further proceedings. But the Commission's view cannot be undermined on either basis and it should therefore be affirmed.

Certainly there is ample testimony in this case by engineers to the effect that the Bristol substation equipment constitutes "facilities for transmission of electric energy in interstate commerce," as distinguished from "facilities used in local distribution." And the very fact that the Commission, with all its accumulated wisdom and experience, is of the opinion that interstate transmission ceases only after the transmitted energy has been converted into a form suitable for local distribution and use is not without weight and significance.

From a legal standpoint, the Commission made no plain error. Clearly no opinion in this court has purported to decide at what precise point interstate transmission of electrical energy ends and local distribution commences. This seems to be a novel point in so far as legal precedent is concerned. The Commission's conclusion in this respect hardly seems so unreasonable and unsound as to require us to hold, as a matter of law, that interstate transmission ends just before the voltage is decreased. And this court does not pretend so to hold in this case.

The court criticizes the Commission and remands the case to it, however, mainly because it cited Southern Nat. Gas Corp. v. Alabama (1937) 301 US 148, 155, 81 L ed 970, 975, 57 S Ct 696 and East Ohio Gas Co. v. Tax Commission (1931) 283 US 465, 471, 75 L ed 1171, 1175, 51 S Ct 499, in a footnote in support of its proposition that interstate transmission ends only after the energy is converted back into a form suitable for local distribution. It is said that the Commission erroneously assumed that those cases set forth a rule of law which excluded the process of reducing energy from high to low voltage in subdividing it to serve ultimate consumers from the business of local distribution. But even assuming that these two cases do not enunciate such a rule and do not directly support the Commission's proposition, it does not follow that the Commission committed reversible error by citing them in a footnote. The Commission's proposition was grounded not on these two cases but upon the testimony in the record and its own knowledge and experience pertaining to electrical transmission. This is plainly revealed by the use of the phrase "in our opinion" in the sentence setting forth the Commission's distinction between interstate transmission and local distribution. The slight reference to the Southern Natural Gas Corporation and East Ohio Gas Company Cases was at most for purposes of analogy and cannot serve to impair the true underlying basis of the Commission's proposition. Presumably all the Commission need do on remand in this respect is to remove the footnote reference to these cases——a fact that makes obvious the proposition that more than an irrelevant or

even erroneous citation of a case should be required before we are justified in reversing an administrative determination and sending it back for further consideration.

The court also deals at great length with the policy declaration in § 201(a) of the act that Federal regulation is "to extend only to those matters which are not subject to regulation by the states" and with the "but" clause in § 201(b), which states that the Commission shall not have jurisdiction, except as specially provided, over certain facilities, including those used in local distribution. But neither of these provisions is controlling in this case where the Commission has made a clear and supportable finding that petitioner is a public utility within the meaning of the act and where the only Federal regulation sought to be imposed is the accounting requirements of § 301(a).

It may be conceded that this court in Jersey Central Power & Light Co. v. Federal Power Commission (1943) 319 US 61, 87 L ed 1258, 48 PUR(NS) 129, 63 S Ct 953, did not read out of the act the policy declaration in § 201(a). But it did make clear that the declaration, which speaks solely in terms of "regulation," was directed solely at proposed Federal regulation of the generation, transmission, and sale of electric energy rather than at proposed Federal regulation of the corporate financial arrangements of utilities, such as their accounting methods. 319 US at pp. 74, 75. Congress did not intend, in other words, to intrude upon state regulation of generation, transmission and sale of energy but it did intend to impose financial regulations on public utilities engaged in interstate transmission of energy even though states might also impose financial regulations. This means, under the facts of this case, that interstate transmission of energy is a proper test of whether Federal accounting standards may be imposed. What sort of transmission may be a proper subject of Federal regulation in and of itself if the state of Connecticut already regulates the transmission facilities is not in issue. The Commission clearly did not misconceive the meaning of this policy declaration and, in light of this court's opinion, it apparently need do no more than spell out its recognition of the scope and present inapplicability of the declaration.

Nor did the Commission do violence to the "but" clause of § 201(b). Here the Commission, following the rule stated in the Jersey Central Power & Light Company Case, *supra* (319 US at p. 73, 48 PUR(NS) at p. 137), that: "The determinative fact is the ownership of facilities used in transmission," has found that petitioner is a public utility since it owns and operates facilities used in interstate transmission of energy. The Commission thus has jurisdiction over petitioner for accounting purposes. The denial of jurisdiction in the "but" clause where facilities are used for transmission of energy in local commerce has no relevance in this case, an obvious fact which the Commission apparently now must make explicit on remand.

The Commission is dealing here with a difficult marginal case. The precise dividing line between interstate transmission and local distribution can only be drawn by those familiar with the engineering and electrical problems involved. The problem in

this case, moreover, is a relatively unique one. An informal survey by the Commission has shown that out of a total of about 1,000 privately owned electric utilities there are only 12 which own or operate step-down substation facilities for taking out-of-state energy and which would not otherwise be public utilities under the act. The problem is thus one peculiarly within the competence of the Commission, which has shown no desire to use the principle it has enunciated in this case and could not use it as a vehicle for assuming unjustified jurisdiction over the facilities of all the local distributing companies in the nation. It has given proper respect to the dictates of Congress relative to state regulation. We should therefore affirm its action in this case without burdening it with requirements of artistic refinement and of negations of the applicability of irrelevant statutory provisions.

Mr. Justice Black and Mr. Justice Reed join in this dissent.

UNITED STATES SUPREME COURT

Market Street Railway Company

v.

California Railroad Commission et al.

Nos. 510, 511
323 US —, 89 L ed —, 65 S Ct 770
March 26, 1945; rehearing denied April 23, 1945

APPEAL *from judgment of Supreme Court of California sustaining Commission order reducing street railway fares; affirmed. For decision below, see (1944) 24 Cal (2d) 378, 54 PUR(NS) 232, 150 P(2d) 196, which affirmed (1944) 54 PUR(NS) 214.*

Rates, § 649 — Procedure — Sufficiency of notice and hearing.

1. A rate order not invalid on the ground that a fair hearing has been denied because no adequate notice was given that rates were under attack, where the proceeding was instituted by an order reciting the Commission's belief that public interest demanded an inquiry into the reasonableness of rates, as well as sufficiency and adequacy of service, and investigation of both was ordered, it appearing further that the record is replete with evidence that would have no bearing on service questions except as fares were involved, p. 25.

Valuation, § 2 — Due process — Purpose of evidence.

2. A company involved in a rate proceeding is not denied a fair hearing because it had no notice that the Commission was receiving evidence of its offer to sell its property at a stated price for use as a rate base, although the

decision and the grounds of decision were unexpected, since surprise is not necessarily want of due process, p. 25.

Appeal and review, § 53 —Grounds for reversal — Conduct of hearing.

3. A misapprehension by a litigant of the steps which its best interests require during a trial, although it may be appealing grounds for a plea to the discretion of the hearing tribunal for another chance, is not grounds for judicial interference as a denial of constitutional rights, p. 25.

Rates, § 648 — Basis for findings — Evidence evaluated by Commission — Absence of expert testimony.

4. No denial of due process results from the fact that a Commission, experienced with the affairs of a regulated company, has made findings in a rate case by evaluating the company's experience for itself without the aid of expert testimony, drawing inferences as to the probable effect on traffic of a given rate decrease, where traffic records are in evidence as well as the traffic experience of a competing municipal line, p. 26.

Evidence, § 32 — Matters outside the record — Company reports.

5. A rate order is not invalid under the due process clause, on the theory that it is based on matters outside the record, although the Commission in estimating revenues has considered filed monthly reports to supplement earlier figures introduced in evidence, where no contention is made that the information was erroneous or was misunderstood by the Commission and no contention is made that the company could have disproved it or explained away its effect for the purpose for which the Commission used it, p. 27.

Rates, § 172 — Reasonableness — Value of service — Absence of confiscation.

6. A rate order cannot be held invalid under the due process clause because it is based in part on value of service when the court does not find that the rate is confiscatory, p. 28.

Valuation, § 39 — Rate base — Reproduction cost — Declining industry.

7. Disregard of theoretical reproduction cost of a street railway in fixing rates is not erroneous when it appears that no responsible person would think of reproducing the present plant, consisting in substantial part of cable cars and obsolete equipment, and there is no basis for assuming that anyone in the light of prevailing conditions in the street surface railroad industry generally would consider reproducing any street railway system, p. 29.

Return, § 50 — Confiscation — Declining industry.

8. Principles applicable to the sufficiency of return to assure confidence in financial integrity and to attract capital in the case of a company having the advantage of an economic position which promises to yield an excessive return are inapplicable to a company whose financial integrity already is hopelessly undermined, which could not attract capital on any possible rate, and where investors recognize as lost a part of what they have put in, p. 29.

Return, § 6 — Basis — Constitutional requirements.

9. The due process clause has not been held to require a Commission to fix rates on present reproduction value of something no one would presently want to reproduce, or on the historical valuation of a property whose history and current financial statements show the value no longer to exist, or on an

investment after it has vanished, even if once prudently made, or to maintain the credit of a concern whose securities already are impaired, p. 29.

Constitutional law, § 15 — Due process — Economic values.

10. The due process clause, although applied to prevent governmental destruction of existing economic values, cannot be applied to insure values or to restore values that have been lost by the operation of economic forces, p. 29.

Return, § 64 — Confiscation — Experimental rates.

11. The owners of a property dedicated to the public service cannot be said to suffer injury if a rate is fixed, for an experimental period, which probably will produce a fair return on the present fair value of their property; and if it has lost all value except salvage they suffer no loss if they earn a return on salvage value, p. 29.

Valuation, § 37 — Measures of value — Sale offer.

12. No error was found in the fixing of street railway rates on a rate base equivalent to the amount at which the company had offered to sell its properties to a city, where, apart from a little brief wartime prosperity, it seemed doubtful whether any rate would yield operating expenses, since under these circumstances nothing was taken from the company by the impact of public regulation, p. 29.

Rates, § 636 — Experimental period — Property sale terminating test period.

13. A rate order contemplating a test of experience should not be held invalid because the experiment has not taken place and the Commission's predictions cannot be verified, where it was the company which defeated the experiment by securing a stay of the rate order and then totally frustrated the experiment by the sale of the property, p. 31.

APPEARANCES: Francis R. Kirkham, of San Francisco, California, argued the cause for appellant; Everett C. McKeage, of San Francisco, California, argued the cause for appellees.

Mr. Justice JACKSON delivered the opinion of the court: Two appeals have been taken from a single judgment of the supreme court of California because counsel was uncertain when the judgment became final for our jurisdictional purposes. The decision was rendered July 1, 1944; it concluded, "The order is affirmed"; a petition for rehearing was denied July 27, 1944. The first appeal was applied for and allowed on July 31, 1944. If the judgment became final on denial of rehearing, this appeal was timely. However the California Rules on Appeal expressly provide that a decision of the supreme court "becomes final thirty days after filing unless otherwise ordered prior to the expiration of said 30-day period." [1]

[1] Rule 24(a) provides: "[When decisions become final] All decisions of the reviewing courts shall be filed with the clerk. A decision of the Supreme Court becomes final thirty days after filing unless otherwise ordered prior to the expiration of said 30-day period. Pursuant to Art. VI, § 4c, of the Constitution, a decision of a district court of appeal becomes final as to that court, thirty days in civil cases and fifteen days in criminal cases after filing, and thereafter is not subject to modification or rehearing by said court. Where an opinion is modified without change in the judgment, during the time allowed for rehearing, such modification shall not postpone the time that the decision becomes final as above provided; but if the judgment is modified during that time, the period specified herein begins to run

Remittitur does not issue until the end of the 30-day period.[2] It issued on August 1 and certified, according to practice, that "the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 1st day of July, 1944; and now remaining of record in my office." If the date of its issue, being also the date of finality fixed by the rule, governs finality for purposes of our jurisdiction, the judgment was not a final one at the time the first appeal was granted. On the chance that it might be dismissed as premature, a second appeal was presented and allowed on September 21st.

Our jurisdiction to review a state court judgment is confined by long-standing statute to one which is final. Judicial Code, § 237, 28 USCA § 344, 8 FCA title 28, § 344. Final it must be in two senses: It must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court.

We have held that finality of a judgment of a state court for determining the time within which our jurisdiction to review may be invoked is not controlled by the designation applied in state practice. Department of Banking v. Pink (1942) 317 US 264, 87 L ed 254, 63 S Ct 233; Cole v. Violette (1943) 319 US 581, 87 L ed 1599, 63 S Ct 1204. The judgment for our purposes is final when the issues are adjudged. Such finality is not deferred by the existence of a latent power in the rendering court to reopen or revise its judgment. The waiting period prescribed by the statute here seems to reserve a power of that character. The decision during this period does not lack the attributes of an adjudication, it is not awaiting lapse of time to become a judgment, it merely is subject to modification. When this period runs, unless the court has moved meanwhile, it becomes powerless to change or modify the judgment. Oakland v. Pacific Coast Lumber & Mill Co. (1916) 172 Cal 332, 337, 156 Pac 468, Ann Cas 1917E 259; Re Ross (1922) 189 Cal 317, 318, 207 Pac 1014. The rule is thus a limitation on the time during which the court may reconsider, which in absence of such rule might expire only with the end of the term or some other event determinative under local law. Such latent powers of state courts over their judgments are too variable and indeterminate to serve as tests of our jurisdiction. Our test is a practical one. When the case is decided, the time to seek our review begins to run. A timely petition for rehearing defers finality for our purposes until it is acted upon or until power to act upon it has expired as here it would appear to do at the end

anew, as of the date of modification." Rules on Appeal for the Supreme Court and district courts of appeal of the state of California, effective July 1, 1943. See 22 Cal(2d) 1.

[2] Rule 25 so provides. "A remittitur shall issue after the final determination of any appeal, or of any original proceeding in review in which an alternative writ or order to show cause has been issued. Unless otherwise ordered, the clerk of the supreme court shall issue the remittitur when a judgment of that court becomes final. . . ." Rule 25(a). "For good cause shown, or on stipulation of the parties, the supreme court may direct the immediate issuance of a remittitur." Rule 25(b). For discussion of this rule see Witkin, New California Rules on Appeal (1944) 17 So Cal L Rev 248 et seq.

of the 30-day period.[3] If rehearing is granted, the judgment is opened, and does not become final as a prerequisite to application for review by us until decision is rendered upon rehearing.

We postponed consideration of jurisdiction until hearing on the merits.[4] We hold that this judgment became final on denial of rehearing, that the first appeal was timely and that the precautionary second appeal is duplication. Accordingly the appeal in No. 511 is dismissed and that in No. 510 is entertained upon its merits.

The Market Street Railway Company at the commencement of these proceedings operated a system of passenger transportation by streetcar and by bus in San Francisco and its environs. The Railroad Commission of California instituted on its own motion an inquiry into the company's rates and service. After hearings, an order was promulgated reducing the fare from 7 to 6 cents.[5] The company, after rehearing was denied,[6] obtained review by the supreme court of California. It also obtained a stay of the Commission's order, conditioned upon impounding the disputed one cent per passenger to abide settlement of the issues upon which its ownership would depend. The supreme court of California affirmed the order[7] and appeal is taken to this court. Meanwhile the company sold its operative properties to the city of San Francisco. The case is saved from being moot only because its decision is necessary to determine whether the company is entitled to the impounded portion of the fares or whether the money shall be refunded to passengers making claims and unclaimed amounts thereof be paid over to the state, as required by conditions of the stay order.

The appeal raises constitutional issues only. The contention is that the order deprives the appellant of its property without due process of law, contrary to the Fourteenth Amendment. Appellant claims denials of due process in matters of procedure in that it had no adequate notice that its rates were under attack or adequate opportunity for a hearing thereon, that the order in several vital particulars is not supported by substantial evidence or by any evidence, and that it was improperly based on matters outside of the record on which there was no opportunity to cross-examine or to be heard. It claims a taking of its property as a result of the order on the ground that it would force the company to operate at a loss because the Commission used a rate base of $7,950,000, the price at which appellant

[3] "The supreme court or a district court of appeal may grant a rehearing in any cause after its own decision; and any cause pending in a department of the supreme court may be ordered heard by the supreme court in bank. A rehearing or hearing in bank may be granted on petition, as provided in subdivision (b) of this rule, or on the court's own motion, prior to the time the decision becomes final therein." Rule 27(a).

"An order of the supreme court granting a rehearing shall be signed by at least four justices assenting thereto, and filed with the clerk; and a hearing in bank after decision in department may be ordered as provided in Art. VI, § 2, of the Constitution. If no order is made before the decision becomes final, the petition shall be deemed denied, and the clerk shall enter a notation in the register to that effect." Rule 27(e).

[4] — US —.

[5] The opinions are reported (1943) in 45 Cal RCR 53.

[6] The opinion on rehearing is reported (1944) in 45 Cal RCR 162, 54 PUR(NS) 214.

[7] The court's opinion is reported (1944) in 24 Cal(2d) 378, 54 PUR(NS) 232, 150 P (2d) 196.

had offered to sell its operative properties to the city, and did not consider reproduction cost, historical cost, prudent investment, or capitalization bases, on any of which under conventional accounting the 6-cent fare would produce no return on its property and would force a substantial operating deficit upon the company.

The appellant in support of its contentions that it has been denied due process in procedure and has been subjected to an unconstitutional taking of its property invokes many decisions of this court in which statements have been made that seem to support its contentions. But it should be noted at the outset that most of our cases deal with utilities which had earning opportunities, and public regulation curtailed earnings otherwise possible. But if there were no public regulation at all, this appellant would be a particularly ailing unit of a generally sick industry. The problem of reconciling the patrons' needs and the investors' rights in an enterprise that has passed its zenith of opportunity and usefulness, whose investment already is impaired by economic forces, and whose earning possibilities are already invaded by competition from other forms of transportation, is quite a different problem. The company's practical situation throws important light both on the question whether the rate reduction has taken its property and also upon the criticisms it makes of the conduct of the hearings.

Transportation history of San Francisco follows a pattern not unfamiliar. This property has passed through cycles of competition, consolidation and monopoly, and new forms of competition; it has seen days of prosperity, decline, and salvage. In the 1850's an omnibus service began to operate in San Francisco. In the 1860's came the horsecar. The 1870's saw the beginning of the cable car, for which the contour of the city was peculiarly adapted. The Market Street Railway Company was incorporated in 1893 and took over 11 of the 17 streetcar lines then independently operated in the city. In 1902, United Railroads of San Francisco was organized. This consolidated under one operating control properties of the Market Street Company and five other lines, comprising 229 miles of track, much of which was cable-operated. It suffered greatly from the earthquake and fire of 1906, but carried out a considerable program of reconstruction between 1906 and 1910. In 1921 it failed to pay interest on outstanding bonds. Bondholders acquired the properties and revived the Market Street Railway Company, which had been a dormant subsidiary of United, to operate them.

In 1912 the city and county of San Francisco began operation of a municipal street railway line. This line is not and never has been under the Railroad Commission's jurisdiction. It expanded rapidly, its routes in some instances parallel those of appellant, and its competition has been serious. Throughout the period of competition the municipal lines have operated on a 5-cent fare. The Market Street Line also operated on a 5-cent fare until July 6, 1937. In that year it applied to the Commission for an increase to a 7-cent fare. This was denied, but a 2-cent transfer charge and other adjustments were authorized. In March 1938 the company again peti-

tioned for a 7-cent fare, with reduction for school children. The Commission authorized a 7-cent fare, but required some concession to token buyers. A few months later the company again asked a straight 7-cent fare and relief from the token rate. The Commission directed the company to apply to the city for permission to abandon certain lines and to protect it against "jitney competition," stipulating that the 7-cent fare could be made effective it the city failed to respond. The city did not act, and the 7-cent fare became effective January 1, 1939.

But the increase of fare brought no increase of revenue. Both traffic and revenue continued to decline, and in 1941 reached the lowest point in twenty years. Then came war, bringing accelerated activity, increase of population of the city, rubber and gas shortage, restrictions on purchase of new and retirement of many old automobiles. Traffic and revenues showed a sudden increase. The Commission found, however, that the service had constantly deteriorated and was worse under the 7-cent fare than under the former 5-cent rate. It recognized that some of the causes were beyond the company's control. But after allowance for those causes, it also found evidence of long-time neglect, mismanagement, and indifference to urgent public need. It found the company's service inferior to the service of the municipal lines, although appellant charged a 40 per cent higher fare. Defects in service consisted of failure to operate on schedule, long intervals between cars, followed by several cars operating with little headway, overloading, inadequate inspection, and inadequately maintained rolling stock. The company had some 70 cars out of operation and in storage because of shortage of manpower. Its streetcar rolling stock was obsolete, 73 electric cars and 12 cable cars being out of service. None of the cars was modern. The municipal lines had tried to lease the unused cars for operation on its lines, but the company refused. The city was denied priorities for purchase of new busses by Federal authorities because of idle rolling stock in the city. The Commission concluded that the reason for the company's declining to lease for a fair rental rolling stock it could not use was fear of competition. The company was handicapped in manpower, the municipal lines offering somewhat better wages and working conditions that seemed more attractive. The entire system was suffering from deferred maintenance, the amount expended for way and structures maintenance having been steadily reduced, both in dollars and in proportion of total operating costs.

The Commission disagreed with the company as to the use to be made of wartime increase in revenues. The company said it had no definite plan for setting aside anything for maintenance. The management thought its first obligation was to discharge its debts. The Commission took the view that allowances for depreciation as part of the costs of operation should be spent in replacement of depreciated property, and not for payment of debts.

Reviewing the financial results of fare increases, the Commission concluded that the company would reap no lasting benefit from rates in excess

of 5 cents, due to the tendency of a higher rate to discourage patronage. The war traffic the Commission thought temporary. But it concluded that a 6-cent fare would sufficiently stimulate traffic to leave after operating expenses approximately a 6 per cent return on a rate base of $7,950,000. This was the figure at which the company had offered to sell its operative properties to the city. Accordingly the Commission found the 6 cents to be a reasonable rate to the company and to be all or more than the reasonable value of the services being rendered to patrons. It considered this rate to be experimental and kept the proceeding open for such further orders as might be just and reasonable. The company applied for rehearing on substantially the grounds it urges here. Its arguments were considered at length in an opinion which denied rehearing. The supreme court of California overruled all of the company's objections and affirmed the Commission's order.

The reduced rate never took effect. The company obtained delay from the Commission and a stay order from the court. It then sold its properties to the city, which took over and continued the 7-cent fare. So the anticipations of the Commission as to increased patronage from the rate reduction never have been put to the test of experience. Our review considers only whether the order was valid when and as made.

[1–3] 1. Appellant says that the order is invalid because it was denied a fair hearing, given no adequate notice that its rates were under attack, and hence was afforded no opportunity for a hearing on the reasonableness of its rates. We find this contention to have no foundation in the record. The order of the Commission instituting the proceeding recited its belief "that public interest demands an inquiry into the reasonableness of the rates, as well as the sufficiency and adequacy of the service rendered" by appellant, and investigation was ordered of both. Due notice of the proceeding was given and it was entitled an investigation "into the reasonableness of the rates and charges, and into the sufficiency and adequacy of the" service. The hearing was opened with a similar statement by the Commission. The record is replete with evidence that would have no bearing on the questions of service except as fares were involved. Experts of the Commission testified at length as to financial history and rate experience of the company. The company's president testified concerning the rate situation and the company's experience with the 7-cent fare. Its counsel put in evidence the Commission's former decisions authorizing increases in fares.

The company particularly complains that it had no notice that the Commission was receiving evidence of its offer to sell its properties for $7,950,000 for use as a rate base. The offer was received in evidence without limitation or statement of its purpose. Nothing appears to mislead or entrap the company or to lull it into a sense of security. It seems simply to have assumed that no explanation of the offer was necessary. Doubtless the decision and the grounds of decision were unexpected. But surprise is not necessarily want of due process.

We find that the company had rea-

sonable notice that its rates were under attack and was not denied opportunity to be heard thereon. We can well understand how counsel's attention became diverted to more sharply contested aspects of the case. But even if a more convincing showing were made that the company had relevant evidence to be heard, we find no adequate excuse for the failure to offer it in the proceeding. No offer was rejected, no request for time to obtain such evidence was denied. A misapprehension by a litigant of the steps which its best interests require during a trial may be appealing grounds for a plea to the discretion of the hearing tribunal for another chance, but it is not grounds for our interference as a denial of constitutional rights.

[4] 2. It is next contended that the order is invalid under the due process clause because it is unsupported by evidence and is based on the Commission's speculation and conjecture. This charge relates particularly to those findings which predict the effect of a rate reduction in stimulating traffic. The Commission's estimates and predictions do not follow any particular testimony. Appellant urges that such predictive findings may be made only on expert testimony, subject to cross-examination, explanation, and rebuttal, and may not be based on the Commission's own expert knowledge. Various considerations are advanced to show that the Commission's predictions were based on innocent analysis and were improbable.

Appellant relies upon our holding in Ohio Bell Teleph. Co. v. Public Utilities Commission (1937) 301 US 292, 300, 81 L ed 1093, 18 PUR (NS) 305, 310, 311, 57 S Ct 724. In that case the Commission ordered refunds "upon the strength of evidential facts not spread upon the record." This consisted "of information secretly collected and never yet disclosed. The company protested. It asked disclosure of the documents indicative of price trends, and an opportunity to examine them, to analyze them, to explain and tc rebut them. The response was a curt refusal. Upon the strength of these unknown documents refunds have been ordered for sums mounting into millions, the Commission reporting its conclusion, but not the underlying proofs. The putative debtor does not know the proofs today. This is not the fair hearing essential to due process. It is condemnation without trial." Nothing of that kind occurred in this case. The basis for a judgment is here in the record. The company itself put in evidence decisions by the Commission in which by cautious steps it permitted advance of the rates from 5 to 7 cents. Traffic records before and after each advance are in evidence. Also in the record is the traffic experience of the competing municipal line, which did not increase its fares and which did not suffer declines in traffic and revenues comparable to those which followed this company's increase of fares. This is not a case where the data basic to a judgment have been withheld from the record. The complaint is that the Commission formed its own conclusions without the aid of expert opinions. It is contended that the Commission should draw conclusions from these facts only upon hearing testimony of experts as to the conclusions they would draw from the facts of record. Experts'

judgments, however, would not bind the Commission. Their testimony would be in the nature of argument or opinion, and the weight to be given it would depend upon the Commission's estimate of the reasonableness of their conclusions and the force of their reasoning. There is nothing to indicate that any consideration which could be advanced by an expert has not been advanced by the company in argument and fully weighed.

We cannot say that it is a denial of due process for a commission so experienced as the record shows this Commission to have been with the affairs of this particular appellant to draw inferences as to the probable effect on traffic of a given rate decrease on such a record as we have here. Particularly would a conclusion of denial of due process be unwarranted where, as here, the Commission recognized the infirmity of any predictions, regarded its rate order as a temporary experiment for which no fixed period was set, and held open the proceeding to receive whatever lessons experience might teach. Its step here is after all only receding, on experience, from steps it earlier had taken to advance the rate, which also had been regarded as experimental and as to which experience had disappointed expectations. We find no denial of due process in these circumstances from the fact that the Commission evaluated the company's experience for itself without the aid of expert testimony.

[5] 3. It also is urged that the order is invalid under the due process clause because it is based on matters outside the record. The decision of the Commission stated that "in the eight months' period, January to August, inclusive, of 1943 the operating revenues of the company amounted to $5,689,775," and compared this with the operating revenues for the same period of 1942 and found an increase of 20 per cent. On this basis it estimated the total for the full year of 1943 under the prevailing 7-cent fare. Challenged upon the ground that the operating revenues from January to August of 1943 were not in the record, the Commission admitted that these figures were taken from the appellant's monthly reports filed with the Commission. It contended that even if it was in error to refer to such reports, the error was harmless, since the record without the figures supported the reasonableness of the 6-cent fare and it was therefore immaterial that the Commission used some additional figures. No contention is made here that the information was erroneous or was misunderstood by the Commission, and no contention is made that the company could have disproved it or explained away its effect for the purpose for which the Commission used it. The most that can be said is that the Commission in making its predictive findings went outside of the record to verify its judgment by reference to actual traffic figures that became available only after the hearings closed. It does not appear that the company was in any way prejudiced thereby, and it makes no showing that, if a rehearing were held to introduce its own reports, it would gain much by cross-examination, rebuttal, or impeachment of its own auditors or the reports they had filed. Due process, of course, requires that Commissions proceed upon matters in

evidence and that parties have opportunity to subject evidence to the test of cross-examination and rebuttal. But due process deals with matters of substance and is not to be trivialized by formal objections that have no substantial bearing on the ultimate rights of parties. The process of keeping informed as to regulated utilities is a continuous matter with Commissions. We are unwilling to say that such an incidental reference as we have here to a party's own reports, although not formally marked in evidence in the proceeding, in the absence of any showing of error or prejudice constitutes a want of due process.

[6] 4. The order is said to be invalid under the due process clause because it is based in part on the so-called "value of service" theory. It is urged that "a confiscatory rate cannot be sustained on the theory that it is an adequate price for the service independently valued" and there is no evidence justifying a rate reduction on the theory of the value of the service.

The question whether a confiscatory rate can be justified because service is bad can only be reached when we find a prescribed rate to be confiscatory. As we do not find this rate to be such, we do not need to pronounce upon the abstract doctrine as to the validity of the "value of service" theory as justifying rates that do not yield a fair return. The Commission in this case did not make an independent valuation of the service to patrons and fix rates accordingly.

The consideration of service as a justification for rates arises in this case upon a comparison of the service of the company under the 5-cent rate and under the 7-cent rate. The Commission found that the 40 per cent increase of rate had been accompanied by a deterioration of service. Some factors in the bad service were beyond the company's control; others were found not to be without remedy by good management. Certainly if the increased fare had been accompanied by an improved service, it would be used as an argument by the company, and a powerful one it would be, for the continuance of the higher rate. That higher rates failed to improve, failed even to maintain, service certainly removed one of the justifications for the increase which the company was enjoying. It must not be forgotten that the increases that the Commission had allowed were also experimental. So far as the public was concerned the experiment with the 7-cent rate yielded them no better immediate service and, because of the company's policies, gave them no prospect of more permanent service. In fact, by discouragement of patronage it threatened the continuance of the service.

Under these circumstances the Commission did not put a monetary value on a streetcar ride as the basis of the fare. Using the company's service under the 5-cent fare as a standard, it found that the public—aside from the service to war plants, which was admittedly good—was receiving no more transportation service for 7 cents than it had received at 5, and at the same time the company was not receiving increased revenues because the price of the service had exceeded the value that the public put upon it and it had thereby withdrawn its patronage.

Certainly the due process clause of the Constitution is not violated when

a commission takes into consideration practical results to the public of advances which it has allowed in rates. To the extent that the Commission was influenced by considerations of the value of the service in this case, we find nothing that denies the company any rights possessed under the Federal Constitution.

[7–12] 5. The order is asserted to be invalid because it is said to be confiscatory and to compel appellant to operate at a loss. The Commission used a rate base of $7,950,000, the price at which the property had been offered to the city, and the 6-cent rate is not calculated to permit any return on a greater valuation. Before we consider the validity of this rate base, we may well consider what alternatives the case presents. No study of the present cost of reproduction is shown, no present fair value is suggested. Nor do we think it important. Apart from familiar objections to the reproduction-cost method, no responsible person would think of reproducing the present plant, consisting in substantial part of cable cars and obsolete equipment. There is no basis for assuming that any one in the light of conditions which prevail in the street-surface railroad industry generally would consider reproducing any street railway system. It was no constitutional error to proceed to fix a rate in disregard of theoretical reproduction costs.

The Commission in 1920 made a valuation study of appellant's properties and found an historical reproduction cost of road and equipment to be $29,715,147. This valuation, brought forward by adding additions and betterments and deducting retirements, shows a total amount for road and equipment as of December 31, 1942, of $25,343,543.

Actual investment is not disclosed by the record. It does disclose that the book value of appellant's properties as of December 31, 1942, was $41,768,505.20.

The company's outstanding securities at the end of 1942, issued with the approval of the Commission, totaled $37,921,323.96 at face value. They consisted of common stock of over $10,000,000; 3 different classes of preferred stock of $21,000,000; first mortgage bonds of $4,217,500; equipment notes of $735,748.28; and additional long-term debt of $1,041,625.68.

Not one of these nor any combination of them affords a practical or possible rate base, nor does the company suggest that allowance of any rate will earn it a return upon any of these. It has not itself ventured to ask a rate higher than 7 cents, although the inadequacy of its yield to take care of the financial requirements of the company has for some time been apparent. This company obviously is up against a sort of law of diminishing returns; the greater amount it collects per ride, the less amount it collects per car mile. It has long been recognized that this form of transportation could be preserved only by the most complete coöperation between management and public and the most enlightened efforts to make the service attractive to patrons.[8] It is obvious

[8] In May of 1919, the Secretary of Commerce and the Secretary of Labor joined in a letter to President Wilson, advising him that fifty or more urban street railway systems

that, for whatever cause, the appellant has not succeeded in maintaining its service on a paying basis.

It is idle to discuss holdings of cases or to distinguish quotations in decisions of this or other courts which have dealt with utilities whose economic situation would yield a permanent profit, denied or limited only by public regulation. While the company does not assert that it would be economically practicable to obtain a return on its investment, it strongly contends that the order is confiscatory by the tests of Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 603, 605, 88 L ed 333, 345, 346, 51 PUR(NS) 193, 201, 202, 64 S Ct 281, from which it claims to be entitled to a return "sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital" and to "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed." Those considerations, advanced in that case (which was reviewed pursuant to statute rather than under the Fourteenth Amendment), concerned a company which had advantage of an economic position which promised to yield what was held to be an excessive return on its investment and on its securities. They obviously are inapplicable to a company whose financial integrity already is hopelessly undermined, which could not attract capital on any possible rate, and where investors recognize as lost a part of what they have put in. It was noted in the Hope Natural Gas Company Case that regulation does not assure that the regulated business make a profit. See Federal Power Commission v. Natural Gas Pipeline Co. (1942) 315 US 575, 590, 86 L ed 1037, 1051, 42 PUR(NS) 129, 62 S Ct 736. All that was held was that a company could not complain if the return which was allowed made it possible for the company to operate successfully. There was no suggestion that less might not be allowed when the amount allowed was all that the company could earn. Without analyzing rate cases in detail, it may be safely generalized that the due process clause never has been held by this court to require a commission to fix rates on the present reproduction value of something no one would presently want to reproduce, or on the historical valuation of a property whose history and current financial statements showed the value no longer to exist, or on an investment after it has vanished, even if once prudently made, or to maintain the credit of a

representing a considerable percentage of the electric railway mileage was in the hands of receivers, affecting some of the largest cities of the country, and that other systems were on the verge of insolvency and the industry as a whole was virtually bankrupt. They urged the appointment of a commission to study and report upon the problem. President Wilson on June 1, 1919 named a commission which held extensive public hearings. The first witness was ex-President William Howard Taft, speaking for the National War Labor Board, and others, including leading municipal and railway officials and such experienced persons in the problem of regulation as Newton D. Baker, Milo R. Maltbie, Morris L. Cook, Joseph B. Eastman, and many others. Proceedings of the Federal Electric Railways Commission, Vol. 1. An exhaustive report with many recommendations was made. See Analysis of the Electric Railway Problem prepared for the Federal Electric Railways Commission by De Los F. Wilcox, New York city, 1921. Its recommendations were extensive, including certain changes both by the municipalities and by the companies affected. The recommendations were not generally heeded by either.

concern whose securities already are impaired. The due process clause has been applied to prevent governmental destruction of existing economic values. It has not and cannot be applied to insure values that have been lost by the operation of economic forces.

The owners of a property dedicated to the public service cannot be said to suffer injury if a rate is fixed for an experimental period, which probably will produce a fair return on the present fair value of their property. If it has lost all value except salvage, they suffer no loss if they earn a return on salvage value. If the property has no prospect of salvage except through dismantling and sale for scrap, the scrap value for such of it as is to be scrapped may represent its present worth. In this case the owners were fortunate in having a potential buyer. Negotiations had long been under way. The operative properties were twice offered to the city of San Francisco for $7,950,000 and twice the voters rejected the proposition. Ultimately the properties were sold for $7,500,000. The evidence shows that the president of the company reported to the directors "that the price mentioned is the amount that has been agreed upon for the purchase by the city and county of San Francisco of the operative properties of the company after negotiations in respect thereto which covered a considerable period of time and, as previously mentioned, is the best price obtainable therefor." Upon this understanding the board of directors ratified the offer and directed the officers to consummate it.

It is now contended that this offer was calculated by a capitalization of earning power and that this court condemned such a basis of valuation in Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 601, 88 L ed 333, 344, 51 PUR(NS) 193, 199, 64 S Ct 281, when it said: "The heart of the matter is that rates cannot be made to depend upon 'fair value' when the value of the going enterprise depends on earnings under whatever rates may be anticipated." The pronouncement in the Hope Natural Gas Company Case was directed to a situation where the demand for the service permitted such a range of choice in rates as would greatly affect the value of the property. No such choice appears open to the appellant. Apart from a little brief wartime prosperity, it seems doubtful whether any rate would yield appellant's operating expenses.

Under these circumstances we do not find that anything has been taken from the appellant by the impact of public regulation. If the expectations of the Commission as to traffic increase were well founded, it would earn under this rate on the salvage value of its property, which is the only value it is shown to have. If expectations of increased traffic were unfounded, it could probably not earn a return from any rate that could be devised. We are unable to find that the order in this case is in violation of constitutional prohibitions, however unfortunate the plight of the appellant.

[13] 6. The company also contends that it is entitled to reversal because the order contemplated a test of experience, and the experiment has not taken place, and the Commission's predictions cannot be verified. However, it was the company which de-

feated the experiment. A very short trial—a period much shorter than is required to conduct a litigation—would have indicated the effect of the rate reduction in stimulating traffic. But at the company's request the experiment was stayed and then totally frustrated by the sale of the property. Under these circumstances the unavailability of experience to test the order cannot affect its validity. It might be grounds for an appeal to the discretion of the tribunal which rendered the order. It certainly is not a constitutional objection to be enforced by us.

The fixing of future rates always involves an element of prediction. Even monopolies must sell their services in a market where there is competition for the consumer's dollar and the price of a commodity affects its demand and use. This effect may be predicted or projected, but it can be known only from experience. The many detailed objections which the company makes to the Commission's computations of probable yield would be answered by experience. There is nothing in the order which requires that the test period should be a year or any definite time, and there is no ground for assuming that the Commission would have rejected an application to make such changes in the schedule as experience might show to be necessary, in order to produce, if possible, the revenue which it found to be needed. The Commission had not in the past been indifferent to appellant's fiscal problems. Under such circumstances we think it is not forbidden by the Constitution that there be a pragmatic test of matters which even the most expert could not know in advance. Cf. Clark's Ferry Bridge Co. v. Pennsylvania Pub. Service Commission (1934) 291 US 227, 78 L ed 767, 2 PUR(NS) 225, 54 S Ct 427.

We have considered appellant's complaints in considerable detail because the case in so many ways departs from the usual rate case. We find no constitutional infirmity in the result or in the procedure by which it is reached. The judgment of the supreme court of California is therefore affirmed.

NEW YORK SUPREME COURT, WESTCHESTER COUNTY

Re Eugene Manfredonio

183 Misc 770, 52 NY Supp(2d) 392
October 23, 1944

APPLICATION *for order directing telephone company to restore telephone service; matter referred to official referee to hear and report.*

Service, § 134 — Denial at request of police — Claim of illegal use.

1. A telephone company has the right to act upon the request of the police

to deny telephone service, without an independent investigation of its own, where the police inform the company that the telephone is being used for gambling and bookmaking, p. 33.

Service, § 485 — Proceeding to require restoration — Proof of illegal use of telephone.

2. A telephone subscriber whose service has been discontinued at the request of a police department because of an allegation that it is being used for gambling and bookmaking has a right, under Article 78 of the Civil Practice Act, to a speedy determination of the question whether service denial is warranted, p. 33.

APPEARANCES: Paul Crames, of Mount Vernon, for petitioner; Ralph W. Brown, of New York city (Irving W. Young, of New York city, of counsel), for respondent.

DAVIS, J.:

[1] This is an application under Art 78 of the Civil Practice Act for an order directing the respondent to restore petitioner's private telephone service. The service was discontinued and the telephone removed by the respondent acting upon the request of the Mount Vernon Police Department which informed it that the telephone was being used for gambling and bookmaking.

The first question is: Had the telephone company the right to act upon the request of the police department without an independent investigation of its own? The court holds that it was the duty of the respondent to so act, otherwise it might well run the risk of becoming a party to criminal activities and also because sound public policy requires it in the first instance to aid the authorities in their efforts to enforce the law. The police department refuses to rescind its request and the respondent declines to restore the service without such rescission or by order of the court. In this stand the court holds that the telephone company is within its rights.

[2] Telephone service, at one time a luxury, has today become a necessity. The police department should not interfere with a subscriber's service unless it acts with reason. Before it may act in this respect it must be prepared to support its action by evidence that the subscriber has used his telephone for unlawful purposes. Ordinary justice dictates to the court that the petitioner has the right to speedily inquire as to the reasons underlying the discontinuance of his service. Article 78 provides for such a speedy determination.

The affidavits presented upon this application indicate that though petitioner's telephone service was discontinued on August 18, 1944, no action has been taken by the police department since requesting such discontinuance. It also appears that with legal authority the telephone line in question was tapped from which, during a portion of two successive days, evidence was secured of the placing of horse racing bets over the petitioner's telephone. This the latter denies. The affidavits are not satisfactory as to petitioner's knowledge of any unlawful use of his telephone. In such a situation oral testimony should be taken. An order will be presented, on notice, referring the matter to an official referee to hear and report.

NEW YORK SUPREME COURT, SPECIAL TERM, NEW YORK COUNTY

Samuel Shillitani

v.

Lewis J. Valentine, Police Commissioner of the City of New York, et al.

— Misc —, 53 NY Supp(2d) 127
January 24, 1945

MANDAMUS *proceeding to compel restoration of telephone service; proceeding dismissed as to defendant police Commissioner and mandamus to restore service granted.*

Service, § 134 — Denial because of police action — Claim of illegal use.

1. A telephone company has no right to refuse to restore telephone service, disrupted by police officers in a search of a subscriber's home for evidence of illegal bookmaking, although the police department, following acquittal of the subscriber upon a charge of bookmaking, has not approved restoration of service, p. 35.

Mandamus, § 9 — To compel restoration of service.

2. A telephone subscriber is entitled to an order of mandamus compelling restoration of telephone service improperly refused following police action in disrupting the service, p. 35.

Service, § 134 — Grounds for denial — Suspicion of illegal telephone use.

3. A telephone company may not refuse to furnish service and facilities because of mere suspicion or belief that they may be or are being used for an illegitimate end, nor because a subscriber is engaged in illegal pursuits, where they have no connection with the service, p. 36.

Mandamus, § 19 — Proper parties — Police commissioner — Telephone service denial.

4. A police commissioner who has failed to approve restoration of telephone service, disrupted by police action in connection with a claim of illegal use for gambling, is neither a necessary nor a proper party to a proceeding by the subscriber against the telephone company and such commissioner to compel restoration of service, since the Commission is vested with complete jurisdiction and the police have no jurisdiction or authority over the matter of telephone service, p. 37.

Service, § 134 — Denial for illegal use — Telephone used to place bets.

5. A telephone company, although not forced to furnish service to persons for the purpose of using it for an illegal end, has no right to refuse service to a subscriber because he places wagers over his residence telephone, in view of the fact that the statute making bookmaking a crime is directed against

the professional gambler and not against the bettor; the fact that the receiver of a message lawfully transmitted may elect to use it for an improper or illegal purpose cannot be made a basis for refusing service to the subscriber, p. 38.

Service, § 134 — Denial for illegal use — Compliance with request of police.

6. A telephone company cannot escape the burden of deciding whether or not it should comply with a police request to deny service because of alleged illegal use, p. 39.

APPEARANCES: Millard E. Theodore, of New York city, for petitioner; Ignatius M. Wilkinson, Corporation Counsel, of New York city (Harry Zamore, Assistant Corporation Counsel, of New York city, of counsel), for respondent Valentine; Ralph W. Brown, of New York city (Jordan R. Bassett and Irving W. Young, both of New York city, of counsel), for respondent New York Telephone Company.

EDER, J.: Contested mandamus proceeding under Art 78, Civil Practice Act, for a final order to compel the restoration of telephone service to the petitioner at his apartment residence which is occupied by his family and himself. The petitioner is a restaurateur and is also a real estate operator; he was previously engaged for some twenty years in the laundry business; so far as the record discloses he is a respectable individual.

[1, 2] The telephone has been used in the customary manner in which it is used in the home except that the petitioner, an ardent bettor on horse races, used it frequently for placing wagers with bookmakers, calling them from his home. The police, upon mere assumption that he was operating as a bookmaker, and without making the slightest effort to obtain legal evidence of the fact, if such it was, and without legal process of any sort authorizing entry or search and seizure, forcibly entered the apartment over the protests of the petitioner and his wife and proceeded to search the premises. The 'phone was in the bedroom; the petitioner was there and had been placing wagers over the phone; he had some racing form data there and also a pad on which he made notations of his wagers; these were seized by the police; in addition one or two incoming calls were answered by one of the police officers who gave testimony which sought to convey a rather vague hint that bets were being forwarded to petitioner as a bookmaker. Following this, one of the officers physically disrupted the service by removing the instrument and thus terminated all service there; all this occurred over the protest of the petitioner. Then followed his arrest upon a charge of bookmaking; after a trial in the magistrate's court the petitioner was found guiltless and thereupon discharged.

It is a strange anomaly that such tactics should be indulged in by law enforcement officers when the same end could be lawfully achieved by making application to the court, upon a proper and sufficient showing, for authority for legal entry and lawful search and seizure. Ours is a government of laws and adherence to legal modes of procedure is expected of law

enforcement officers and agencies; respect for law cannot be fostered by such conduct and methods as were here resorted to. Constitutional rights, the right of privacy and of the security of the home are very sacred and when ignored and disregarded merit definite rebuke.

Following the petitioner's acquittal in the magistrate's court, he demanded of the company the restoration of the telephone service; the company referred the matter to the police department with which it has an understanding or arrangement to the effect that whenever a subscriber's telephone service is interrupted by the police or whenever the police request the termination of service upon an alleged violation of law, the company will, as in the instant case, terminate the service and will not thereafter restore it until the police department has approved an application for the reëstablishment of said service; and the company states that in the instant case the police department has not approved the restoration of petitioner's telephone service for which reason it has refused to restore it.

It seems clear to me that the company's refusal to restore the service for the reason stated constitutes no defense to this proceeding and that petitioner is entitled to an order of mandamus compelling the restoration of the telephone service.

Coöperation between the police department and the telephone company to combat crime is a commendable arrangement, but however laudable the object and purpose they may not interfere with and cannot be permitted to interfere with or destroy the legal rights of telephone subscribers; nor can any such arrangement override the statutes relating to that subject; these laws are superior to any agreement or arrangement which the police department and the telephone company may enter into. People v. Brophy (1942) 49 Cal App(2d) 15, 120 P(2d) 946.

The defendant telephone company is obliged by law to furnish its service and equipment to the public in general, and impartially, and to provide instrumentalities and facilities which shall be adequate in all respects. Section 91, subd. 1, Public Service Law. "It is the duty of telephone companies to furnish equal facilities and conveniences, impartially to all, irrespective of age, race or habits, and serve all these alike on offering to comply with their reasonable regulations." Jones, Law of Telegraph and Telephone Companies, § 258. But though a telephone company is required by the general rule to furnish its service and facilities to the public generally, this rule is subject to exception that it may not be forced to furnish its instruments and service to persons for the purpose of using them for an illegal business. People ex rel. Restmeyer v. New York Teleph. Co. (1916) 173 App Div 132, 159 NY Supp 369; Cullen v. New York Teleph. Co. (1905) 106 App Div 250, 94 NY Supp 290; Godwin v. Carolina Teleph. & Teleg. Co. (1904) 136 NC 258, 48 SE 636, 67 LRA 251, 103 Am St Rep 941, 1 Ann Cas 203; Jones, *supra*, p. 355. This is plain, common sense reasoning.

[3] Aside from this a telephone company may not refuse to furnish service and facilities because of mere suspicion or mere belief that they may be or are being used for an illegiti-

mate end; more is required (People v. Brophy, *supra;* Western U. Teleg. Co. v. Ferguson [1877] 57 Ind 495); nor because the character of the applicant is not above reproach, nor because such person is engaged in immoral or illegal pursuits, where they have no connection with the service applied for. Godwin Case, *supra.* In the Brophy Case, the court said, at pp. 33, 34 of 49 Cal App(2d), at p. 956 of 120 P(2d):

"The telephone company has no more right to refuse its facilities to persons because of a belief that such persons will use such service to transmit information that may enable recipients thereof to violate the law than a railroad company would have to refuse to carry persons on its trains because those in charge of the train believed that the purpose of the persons so transported in going to a certain point was to commit an offense, or because the officers of such company were aware of the fact that the passengers were intent upon visiting a bookmaking establishment upon arrival at their destination, which establishment was maintained for the purpose of unlawfully receiving bets on horse races."

These established rules for guidance are wholesome, logical, and sound.

[4] As hitherto mentioned, the petitioner by this proceeding seeks an order of mandamus to compel the restoration of his telephone service; it is directed not to the telephone company alone but also to the defendant police commissioner; as against him an order of mandamus is sought directing him to give his approval and that of the police department to the defendant telephone company to restore to petitioner telephone equipment and service and as to the company directing it to thereupon do so.

As to the defendant police commissioner the petition and proceeding must be dismissed for the reason that it is not maintainable as to him and he is neither a necessary nor a proper party to the proceeding. Mandamus is a remedy which may be invoked to compel a public officer to do an act or discharge a duty specifically required of him by law to be performed (§ 1287, Civil Practice Act); where no duty or obligation rests upon him, mandamus may not be employed as a remedy.

The Public Service Commission is vested with complete jurisdiction and with general powers in respect to and over telegraph and telephone corporations, Art 5, Public Service Law; the police commissioner is permitted to maintain a police telephone system, very expressly limited to the purposes and business of the department, but, however, "subject to the general laws of the state." Section 438, NY City Charter.

Neither the police commissioner nor the police department has any jurisdiction or authority over the matter of furnishing, discontinuing or restoring telephone service to the public, nor in any other way, so far as I am aware; his or its approval or disapproval in that regard are meaningless insofar as any legal effect is concerned; they possess no more power in that respect than a stranger; each is utterly without such power whatever, however much the views and attitude of the commissioner or the department may by indirection be enforced, as, for example, by the arrangement or under-

standing between the police and the telephone company, to which reference has been made. See People v. Brophy, *supra,* where a like arrangement existed and was held by the California appellate court to be unenforceable against the subscriber.

There is no authority vested in the police commissioner or in the police department to consider, pass upon, approve or disapprove requests for telephone service as an original application or for resumption of service after interruption or discontinuance or removal of equipment and facilities by or at the request of the police, or for any reason whatever (People v. Brophy, *supra*), and hence there is no duty in that connection required by law of him or it to be performed and therefore no order of mandamus can issue against him or it. For the reasons stated the petition and proceeding are, as to him, dismissed, without costs.

In the situation disclosed the company's refusal to restore service was unwarranted and as has been said constitutes no defense to this proceeding; the order of mandamus should accordingly be granted as against it unless some adequate cause appears to justify its refusal.

[5] As hereinbefore mentioned the telephone company cannot be forced to furnish service and facilities to persons for the purpose of using them for an illegal end. The premise is advanced that such cause exists here in that the petitioner by placing the mentioned wagers over his residence 'phone uses and employs it as a conduit for enabling the crime of bookmaking to be committed; that this is sufficient and adequate reason of itself and justifies the company in refusing to restore any further telephone service.

A similar contention was made and rejected in the Brophy Case; the court said at p. 33 of 49 Cal App(2d), at p. 956 of 120 P(2d):

"Respondent's claim that the furnishing of racing news to bookmaking establishments by telephone constitutes an aiding and abetting in a violation of § 337a of the Penal Code is without merit. It is not the transmission by use of a telephone of information concerning the results or probable results of horse races that constitutes a violation of the quoted Penal Code section, but it is the use which persons may make of such information in the acceptance of bets or maintaining places for the reception of bets that constitutes a violation of the law. Neither the telephone company nor appellant in his capacity of a subscriber for telephone service was accused in the injunction suit of managing, operating or participating in any gambling place or enterprise maintained for the acceptance of wagers on horse races or other contests of skill between men or beasts; and the most that can be said of the charges made against the telephone company and appellant is that the telephone company placed in the hands of appellant the means of furnishing information to others locally and at distant points, which information might be used by such persons to contravene the provisions of § 337a of the Penal Code."

I see no force to this claim. At common law bookmaking was not a crime, and while it is true that bookmaking is now made a crime by stat-

ute, § 986, Penal Law, it is only against the professional gambler that the statute is directed and not against the bettor (People ex rel. Collins v. McLaughlin [1908] 60 Misc 306, 113 NY Supp 306, affirmed [1908] 128 App Div 599, 113 NY Supp 188, appeal dismissed [1909] 194 NY 556, 86 NE 1119); see, also, Bamman v. Erickson (1942) 288 NY 133, 41 NE(2d) 920, 141 ALR 938; the statute does not prohibit ordinary betting, even if repeated from day to day, nor is it bookmaking to make a series of bets in the ordinary way (People v. Laude [1913] 81 Misc 256, 143 NY Supp 156); for that reason the police attempted to level a charge against the petitioner of bookmaking.

The fact that the receiver of a telephone message lawfully transmitted may elect to utilize it for an improper or illegal purpose does not thereby render the original lawful use of the telephone improper or illegal and hence cannot be made a basis by the telephone company for refusing to furnish service to the subscriber. As said in People v. Brophy, *supra,* 49 Cal App (2d) at pp. 30, 31, 120 P(2d) at p. 954:

"The law is clear and decisive on the question of the enforceability of a contract even though one of the parties thereto has knowledge of an intended purpose of the other party, by means of the contract, or the performance thereof, to violate some law or public policy of the state. The rule in that regard is thus stated in 53 ALR 1364, at p. 1366: 'The rule, according to the great weight of authority, is to the effect that a contract legal in itself is not rendered unenforceable by the mere fact that one of the parties thereto has knowledge of an intended purpose of the other party thereto, by means of the contract or subject-matter thereof, to violate some law or the public policy of some state; or, as stated in 6 RCL p. 696, "where there is no moral turpitude in the making or in the performing of the contract, the mere fact that an agreement the consideration and performance of which are lawful incidentally assists one in evading a law or public policy, is no bar to its enforcement, and that, if the contract has been performed by the promisee, it is no defense that the promisor knew that the agreement or its performance might aid the promisee to violate the law or to defy the public policy of the state, when the promisor neither combined nor conspired with the promisee to accomplish that result, nor shared in the benefits of such a violation."' "

[6] There is the further point made by the company that it should not be required to assume the burden of deciding whether or not it should comply with the request of the police department in the mentioned instances, but that it ought to be considered as sufficient cause when it accepts the views of the police in that connection; it merits but scant consideration. I do not see that it should be put on a plane different from that of any person who is confronted with a problem; it must solve it as best it can; the safer course to pursue in such cases, is, of course, to seek legal advice; presumably the company's law department is composed of competent and experienced lawyers. In this connection it is apropos to quote the following from the Brophy Case, 49 Cal App(2d) at p. 33, 120 P(2d) at p. 956:

"Public utilities and common carriers are not the censors of public or private morals, nor are they authorized or required to investigate or regulate the public or private conduct of those who seek service at their hands. Simply because persons who received information transmitted over the telephone facilities were enabled as a result of such information, if they were so inclined, to commit unlawful acts, does not make the telephone company a violator of the criminal laws. If such were the case, the telephone company would likewise be guilty in permitting its facilities to be used in transmitting information to the newspapers of the country as to prospective horse races or prize fights, because the information thus transmitted and published induced or enabled persons to engage unlawfully in betting on the results of such contests."

See, also: Pennsylvania Publications v. Public Utility Commission (1944) 349 Pa 184, 53 PUR(NS) 217, 36 A(2d) 777.

In the first and final analysis an application of this kind must be considered and determined upon the particular facts and circumstances presented. After due consideration and reflection it is the considered judgment of the court that the petitioner is entitled to a final order of mandamus directing the restoration of telephone service at his residence as existed heretofore.

Exception to petitioner to the dismissal of the petition and proceeding as against the defendant police commissioner; exception to defendant telephone company to denial of motion to dismiss. No costs. Settle findings of fact and final order.

NEW YORK SUPREME COURT, RICHMOND COUNTY

Staten Island Edison Corporation

v.

New York City Housing Authority et al.

— Misc —, 52 NY Supp(2d) 639
December 11, 1944

ACTION *by electric company to secure declaratory judgment and monetary award based on claim that municipal housing authority is not entitled to rates applicable to public buildings; judgment for plaintiff.*

Discrimination, § 59.1 — Rate concessions — Municipal housing authority — Public buildings — Federal tax rule.

1. The fact that the Federal government taxes an electric company for current supplied to a municipal housing authority but would not impose a tax

if the current were supplied to a city for its public buildings is not binding upon the court in a proceeding to determine whether the housing authority is entitled to reduced rates for current supplied to public buildings, p. 42.

Discrimination, § 59.1 — Rate concessions — Municipal housing authority — Public buildings.

2. A municipal housing project consisting of residence apartments, constructed in accordance with a state policy of providing low-cost housing as a public use and benefit, is a public building entitled to be served with electricity at the rate charged to a municipality for public buildings, p. 43.

Discrimination, § 59.1 — Rate concessions — Municipal housing authority — Public buildings.

3. The charging of public building rates for electric service to a municipal housing authority does not violate the discrimination statutes of the Public Service Law where tenants do not directly pay for electric energy and the amount of rent paid by a tenant is not affected by the use of more or less electric energy, but the prime purchaser of the energy is the municipality or the authority, p. 46.

APPEARANCES: Naylon, Foster & Shepard, of New York city (George Foster, Jr., of New York city, of counsel), for plaintiff; Ignatius M. Wilkinson, Corporation Counsel, of New York city (Francis J. Bloustein, of New York city, of counsel), for defendants.

GARVIN, Justice: In an action by plaintiff, Staten Island Edison Corporation, hereinafter for convenience called "Edison," against New York City Housing Authority and the city of New York, hereinafter called "Authority" and "City," respectively, plaintiff moves for an order directing judgment on the pleadings in its favor under Rule 112 of the Rules of Civil Practice.

The action is brought to secure a declaratory judgment and a monetary award. "Authority" is a public corporation and a corporate government agency organized under the laws of the state of New York for the purpose of developing public housing projects. One of these projects, located on Staten Island, is known as "Edwin Markham Houses" and consists of residence apartments housing many tenants. As these apartments approached completion, "Edison" was requested to supply electricity for the use of the tenants. "City" claimed that this service should be supplied at the rate charged for "public buildings." "Edison" insisted that the service should be supplied under its Service Classification No. 2 (general service), a higher rate. In order that electric current might be supplied without delay when the apartments of "Authority" were completed, the parties hereto made an agreement in writing which provided that "Edison" would furnish electric current at the rate charged for public buildings until there could be a judicial determination of their respective rights. Accordingly, current was furnished by plaintiff without delay and without prejudice. Its bills under Service Classification No. 2 amounted to $7,345.95. At the rate charged for "public buildings" the charge was $5,731.06. If plaintiff's contention is correct, it is entitled to

receive the difference between these two amounts.

By the determination of this motion the court must decide the question: "Are these apartments 'public buildings'?" So far as this state is concerned, the question has not been squarely presented for judicial determination although the constitutionality of the laws under which "Authority" was organized is now well settled. New York City Housing Authority v. Muller (1936) 270 NY 333, 1 NE (2d) 153, 105 ALR 905.

The apartments in this development are dwellings for persons of limited means and are not rented for general use. They were built with public moneys, but only persons able to meet specified requirements are accepted as tenants. The electric current goes through a common meter, is paid for by "Authority" (or perhaps by "City") and rents are fixed on a basis which includes the electric service. As a result, of course, the tenants of the project, if "City's" contention is correct, thus indirectly but definitely obtain electric current at a lower rate than if they were tenants of an ordinary apartment house near-by or elsewhere in the City.

The principle involved was before the supreme court of the state of Missouri in State ex rel. Ferguson v. Donnell (1942) 349 Mo 975, 163 SW (2d) 940, and the supreme court of the state of Ohio in Youngstown Metropolitan Housing Authority v. Evatt (1944) 143 Ohio St 268, 55 NE(2d) 122, and Federal Public Housing Authority v. Guckenberger (1944) 143 Ohio St 251, 55 NE(2d) 265. Both of these courts were of the opinion that Housing Authority dwellings are private—not public—buildings.

In State ex rel. Ferguson v. Donnell, *supra* [349 Mo at p. 981, 163 SW (2d) at p. 944], it is said:

"The apartments in these buildings are rented to private individuals in which these individuals and their families live. In fact, they are rented in competition with privately owned apartment buildings. They are not open to the public, and, therefore, are not public buildings. . . ."

In the Guckenberger Case, *supra* [143 Ohio St at p. 258, 55 NE(2d) at p. 269], appears the following:

"In the instant case the appellant is engaged in the business enterprise of being a landlord—a fact the true nature of which cannot be changed arbitrarily by mere legislative enactment alone. Clearly the appellant is a proprietor, and as such cannot be heard to complain when its property is not permitted to escape the tax burden common to all proprietors."

The Youngstown Case, *supra* [143 Ohio St at p. 278, 55 NE(2d) at p. 127], quotes from an earlier decision of the Ohio state supreme court in which this language appeared:

"It seems to us clear that where dwellings are leased to family units for the purposes of private homes, the use of such dwellings is private and not public."

[1] Plaintiff's brief calls to the attention of the court that Internal Revenue Bulletin No. 15 points out that in this situation the Federal Government taxes "Edison" for this current supplied to "City" at the rate charged to privately owned apartments, but would not impose a tax if the current were supplied to "City" for its public build-

ings. While this is, of course, an injustice, indeed a gross injustice, it cannot be binding upon the court. These references are made to indicate the attitude of some of our courts and the Federal government itself upon the question of interpretation here involved, which is contrary to the conclusion to be hereinafter announced. In this connection it must not be overlooked that to accept the position taken by defendants we must disregard § 65 of the Public Service Law which forbids unjust discrimination or unreasonable preferences by gas or electric corporations, unless we accept the position that "City," not the tenants, is the user.

Subdivision 2 of § 65, *supra*, provides as follows:

"No . . . electric corporation . . . shall directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for . . . electricity or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects, or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances."

Subdivision 12 of § 66 of the same law provides:

". . . No corporation . . . shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation . . . refund or remit in any manner or by any device any portion of the rates or charges so specified, nor to extend to any person or corporation any form of contract or agreement, or any rule or regulation, or any privilege or facility, except such as are regularly and uniformly extended to all persons and corporations under like circumstances. . . ."

[2] While this court would be disposed to agree with the reasoning of the Ohio and Missouri Cases, to which reference has been made, if this were a case of first impression in all respects, a careful reading of the opinion in the Muller Case, *supra*, by which this court is bound, leads to the conclusion that the New York court of appeals holds the view that the apartment houses in these developments are public buildings. That court points out that the legality of these developments is approved upon a much broader principle than is involved in providing better housing facilities for a limited number of tenants. The court clearly indicates its conclusion that the general public welfare is involved. Its opinion includes these statements, 270 NY at p. 341, 1 NE(2d) at p. 155.

"The menace of the slums in New York city has been long recognized as serious enough to warrant public action. The session laws for nearly seventy years past are sprinkled with acts applying the taxing power and the police power in attempts to cure or check it. The slums still stand. The menace still exists."

Again, 270 NY at p. 341, 1 NE (2d) at p. 155:

"To eliminate the inherent evil and to provide housing facilities at low

cost—the two things necessarily go together—require large scale operations which can be carried out only where there is power to deal in invitum with the occasional greedy owner seeking excessive profit by holding out. The cure is to be wrought, not through the regulated ownership of the individual, but through the ownership and operation by or under the direct control of the public itself. Nor is there anything novel in that. The modern city functions in the public interest as proprietor and operator of many activities formerly and in some instances still carried on by private enterprise.

"It is also said that since the taking is to provide apartments to be rented to a class designated as 'persons of low income,' or to be leased or sold to limited dividend corporations, the use is private and not public. This objection disregards the primary purpose of the legislation. Use of a proposed structure, facility, or service by everybody and anybody is one of the abandoned universal tests of a public use. (citing cases)"

And finally, 270 NY at p. 343, 1 NE(2d) at p. 156:

"In a matter of far-reaching public concern, the public is seeking to take the defendant's property and to administer it as part of a project conceived and to be carried out in its own interest and for its own protection. That is a public benefit and therefore, at least as far as this case is concerned, a public use."

This seems to indicate that it is the court's conclusion that it is not the use of the development by private families but rather the purpose of its use which determines the character or classification of the development.

Based upon the views expressed in the Muller Case, *supra,* this court is of the opinion that in this state it must be held that low cost housing is a public use and benefit; that, therefore, "Edwin Markham Homes" is a "public building" entitled to be served with electric energy by plaintiff at the same rate as charged by it to "City" for "public buildings."

Further authority in this state for the conclusion that buildings of this type are "public buildings" will be found in cases involving § 4, subd. 3, of the Tax Law of this state as will be immediately hereinafter indicated.

Whether property is used for public or private use has been considered by the New York courts in connection with said section and subdivision:

"The distinction between the ownership by a municipality of property for public or governmental purposes, and for purely private or commercial purposes, was early recognized in this state, and has always been observed. See Bailey v. Mayor of New York (1842) 3 Hill(NY) 531, 38 Am Dec 669; Lloyd v. Mayor of New York (1851) 5 NY 369, 55 Am Dec 347." Clark v. Sprague (1906) 113 App Div 645, 99 NY Supp 304, 305.

"The expression 'public use' as employed in the statute has never been defined with exactitude. Its meaning must necessarily depend upon the peculiar circumstances of each case. Certainly the land is not used in the sense of being occupied or employed for any public purpose. Most of it is idle, and not used at all; the balance is in the possession of private individuals as lessees, and not of the public generally. Under these circumstances, plaintiff is not entitled to exemption

under the statute. 'Held for a public use,' in this connection, means that the property should be occupied, employed, or availed of, by and for the benefit of the community at large, and implies a possession, occupation and enjoyment by the public, or by public agencies. Cooley, Constitutional Law (7th Ed) p. 766; Gearin v. Marion County (1924) 110 Or 390, 401, 223 Pac 929, 933; School District of Fort Smith v. Howe (1896) 62 Ark 481, 485, 37 SW 717.

"The term 'public use' is defined in Williams v. Lash (1863) 8 Minn 496, as 'that actual use, occupation and possession of real estate, rendered necessary for the proper discharge of the administrative or other functions of the county, through its appropriate officers.'" Herkimer County v. Herkimer (1937) 251 App Div 126, 295 NY Supp 629, 634.

The New York court of appeals recently had occasion to express its views upon the same subject:

"Property held by an agency of the state is ordinarily immune from taxation only while it is used for a public purpose. Property used primarily to obtain revenue or profit is not held for a public use and is not ordinarily immune from taxation, but property held by a state agency primarily for a public use does not lose immunity because the state agency incidentally derives income from the property. . . . "

"A municipality or agency of the state carrying out a public purpose may at times compete with private business. Those owning the private business are not deprived of their right to the equal protection of the law, guaranteed by the Constitution of the United States, because the private business is subjected to a tax from which the state agency is immune. Puget Sound Power & Light Co. v. King (1924) 264 US 22, 68 L ed 541, 44 S Ct 261. The general principles stated in the opinion in that case justify the exemption from taxation of property held by a public agency for a public purpose and not primarily for revenue, though as an incident of the execution of its public purpose the public agency derives revenue from a use of the property in competition with property put to similar use by private owners. Cf. State Tax Comrs. of Indiana v. Jackson (1931) 283 US 527, 537, 75 L ed 1248, 51 S Ct 540, 73 ALR 1464, 75 ALR 1536." Bush Terminal Co. v. New York (1940) 282 NY 306, 321, 322, 26 NE(2d) 269, 276.

The appellate division of this Department, following the rule laid down in the Bush Terminal Case, *supra*, held, in the case of Kennedy & Co. v. New York World's Fair 1939 (1940) 260 App Div 386, 389, 22 NY Supp(2d) 901, 904, affirmed (1942) 288 NY 494, 41 NE(2d) 789, as follows:

"The question presupposes that the operation of the Fair is a 'private purpose.' It would seem that under the authorities the World's Fair is of such a nature that it is a 'public purpose.' The Fair has the sponsorship, in different degrees, of the city, state, and Federal governments. It includes exhibits of art, science, business, states and nations, and educational and recreational facilities. The defendant Fair Corporation is a nonprofit membership corporation; and the enabling legislation (Chap 544, Laws of 1936) and a subsequent enactment (Chap 471, Laws of 1939) provide that after payment of expenses, any surplus re-

sulting is to be turned over to the city and the state for public purposes. The fact that an admission fee to the fair is charged does not alter its public character. It has been frequently held that municipal corporations may receive revenue from certain functions without losing their municipal rights. Bush Terminal Co. v. New York (1940) 282 NY 306, 317, 318, 26 NE(2d) 269 [274]; People ex rel. Mayor of New York v. Board of Assessors (1888) 111 NY 505, 19 NE 90, 2 LRA 148; People ex rel. Trustees of Masonic Hall and Asylum Fund v. Miller (1938) 279 NY 137, 18 NE(2d) 8."

Upon the general subject the following appears in 12 CJS, Building, p. 385:

"Public building. In a narrow sense a 'public building' is a building erected and owned by state, county, or municipal authorities; a building owned or controlled and held by the public authorities for public use; a building belonging to, or used by, the public for the transaction of public or quasi-public business."

[3] In holding the development to be a "public building" and thus subject to a charge for electric energy at "public building" rates, there is no violation of the discrimination statutes of the Public Service Law. The tenants of the development do not directly pay specifically for electric energy. The amount of rent paid by a tenant is not affected by the use of more or less electric energy. The prime purchaser of the energy is the "City" or "Authority."

The court is of the opinion, therefore, that it must be constrained to hold that these apartments are "public buildings." Plaintiff's motion is denied and judgment is directed in favor of defendants, determining and declaring that the housing development known as "Edwin Markham Houses" is a "public building" and should be supplied with electric energy at "public building" rates.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Amos R. Kirk, Trading and Doing Business As Kirk's Trucking Service

Application Docket No. 39535, Folder 3
January 29, 1945

APPLICATION *by contract carrier for authority to conduct business as a common carrier simultaneously; denied.*

Public utilities, § 130 — Dual operation as common and contract carrier.

The statutory prohibition against dual operations as a common and contract carrier must be construed as mandatory unless "for good cause shown" the

Commission's discretionary powers may be exercised to allow such operation.

By the COMMISSION: Amos Kirk, trading and doing business as Kirk's Trucking Service, is presently authorized to transport, as a contract carrier, stokers, steel, other property and equipment for Badenhausen Corporation, owned, leased, manufactured, or sold by said corporation located in Cornwells Heights, Bucks county, between points in Pennsylvania; nonferrous castings, bulk metal, lumber, other property, and equipment for American Manganese Bronze Company, owned, leased, manufactured, or sold by said company located at Holmesburg, city and county of Philadelphia, between points in said city and within a radius of 50 miles thereof, and from any point in said area to points in Pennsylvania located upon navigable waters or seminavigable streams; and contractors' equipment and supplies for James D. Morrissey between points within a radius of 75 miles of the city hall, city and county of Philadelphia.

By his application filed August 17, 1944, the applicant seeks the right to transport, as a common carrier, property, excluding household goods in use, between points in the city and county of Philadelphia and that portion of Delaware county bounded by Cobb's creek, Township Line Road, Lansdowne avenue and Baltimore avenue (known as the 69th street area); household goods in use between points in the 35th and 41st wards in the city of Philadelphia, which is a transfer of the rights authorized under the certificates issued at A. 34009, Folders 1 and 3, to David R. Brennan and Paul L. Flynn, copartners, trading and doing business as Brennan & Flynn, subject to the same limitations and restrictions.

No protests were filed to the granting of said application. A hearing was held at which time testimony was taken in support of said application. Testimony was introduced concerning the agreement entered into between the transferors and the applicant, the consideration to be paid for said transfer, the property to be transferred and the manner of payment. The testimony disclosed that the transferors, at the present time, are in the Armed Forces. The testimony also disclosed that on April 12, 1944, the transferors were granted permission by the Commission to suspend service until such time as they are officially discharged from Military Service with the understanding that the Commission be notified as soon as they are ready to resume operations. Since no service involved in the present application was rendered between April 17, 1944, the date on which the present application was filed, the applicant elected to produce several witnesses and evidence was offered to show that there was still a need for the service which the transferors had formerly rendered.

We are precluded from passing upon the merits of this type of evidence because of the applicant's failure under the facts appearing of record to meet the obligation imposed upon him by statute. Section 805 of the Public Utility Law provides:

"Dual Operation by Motor Carriers. After the effective date of this act, no person or corporation shall at

the same time hold a certificate of public convenience as a common carrier by motor vehicle and a permit as a contract carrier by motor vehicle, unless for good cause shown, the Commission shall find that such certificate and permit may be held consistently with the public interest and with the policy declared in section eight hundred one of this act."

We must construe this section prohibiting dual operation as mandatory unless "for good cause shown," our discretionary powers may be exercised. There is no evidence of record to support the allegations set forth in the application, therefore, § 805 applies and we cannot exercise any discretion. We must find that the simultaneous holding by applicant of a certificate of public convenience as a common carrier by motor vehicle and a permit as a contract carrier by motor vehicle would be inconsistent with the public interest and the policy declared in § 801 of the Public Utility Law.

Commissioner Houck being absent did not participate in the vote on this order.

MISSOURI PUBLIC SERVICE COMMISSION

Re Missouri Telephone Company

Case No. 10471
February 26, 1945

INVESTIGATION *of proposed rule relating to liability for errors in telephone directory listings; proposed rule disapproved and substitute rule suggested.*

Service, § 50 — Commission jurisdiction over telephone directories — Limitation of liability.

1. The Commission has authority to approve or disapprove a rule relating to limitation of liability for errors in a telephone directory, since a rule relating to directory listings pertains to privileges or facilities of the company within the purview of the statute conferring jurisdiction on the Commission, p. 49.

Service, § 434 — Errors in directory listing — Limitation of liability.

2. A telephone company may by a proper rule provide for a limitation on damages resulting from errors in directory listings, p. 50.

Service, § 434 — Errors in telephone directories — Limitation of liability — Reasonableness of rule.

3. A rule of a telephone company providing for a limitation of liability for errors in directory listings should not contain a provision that the company will not be a party to controversies arising between subscribers or others as a result of such listings, p. 51.

Service, § 434 — Errors in telephone directories — Limitation of liability — Reasonableness of rule.

4. A rule of a telephone company limiting liability for errors in directory listings should not contain a provision that the company will not be liable for damage claimed on account of errors or omissions or for the result of publications of such errors, since such a provision is unnecessary in order to accomplish the purpose of the rule, p. 51.

Service, § 434 — Errors in telephone directories — Limitation of liability — Reasonableness of rule.

5. A telephone company may provide by rule that its liability for damages on account of interruptions to service due to errors or omissions in directory listings will be limited to a pro rata abatement of the charge for service, the maximum abatement not to exceed one-half the service charges for the period from the date of issuance of the directory in which the mistake occurred to the date of issuance of a new directory containing the proper listing, p. 51.

By the COMMISSION: This case is before the Commission by reason of an order of the Commission, dated June 30, 1944, which suspended until October 28, 1944, a certain proposed rule filed by the Missouri Telephone Company relating to directory listings for telephone service furnished at Columbia, Missouri. Thereafter, by order dated October 25, 1944, it appearing that the investigation and decision in the case could not be completed by October 28, 1944, the proposed rule was further suspended until April 28, 1945, unless otherwise ordered by the Commission.

A hearing was held in the matter on January 16, 1945, before one of the Commissioners at the office of the Commission, after due notice had been given to all interested parties. Respondent, Missouri Telephone Company, appeared by attorney and offered testimony by its general manager. The general counsel and chief engineer of the Commission appeared on behalf of the Commission. The city of Columbia, Missouri, was represented by its city attorney.

The proposed rule which is herein under scrutiny reads as follows: "E. The telephone company, except as provided herein, shall not be liable for damage claimed on account of errors in or omissions from its directories nor for the result of the publications of such errors in the directory nor will the telephone company be a party to controversies arising between subscribers or others as a result of listings published in its directories. Claims for damages on account of interruptions to service due to errors or omissions in directory listings will be limited to a pro rata abatement of the charge for such of the subscriber's service as is affected, the maximum abatement not to exceed one-half the service charges for the period from the date of issuance of the directory in which the mistake occurred to the date of issuance of a new directory containing the proper listing."

I

[1] The first question which should be decided is whether or not this Commission has authority to approve or

disapprove the proposed rule. Section 5665 of the Revised Statutes of Missouri of 1939 with reference to certain schedules reads in part as follows:

"Such schedule shall plainly state the places between which telephone and telegraph service, or both, will be rendered and shall also state separately all charges and all *privileges or facilities* granted or allowed and any rules or regulations or forms of contract which may in any wise change, affect or determine any or the aggregate of the rates, rentals, or charges for the service rendered. Such schedule shall be plainly printed and kept open to public inspection. The Commission shall have the power to prescribe the form of every such schedule and may from time to time prescribe, by order, changes in the form thereof." (Italics ours.)

Does the proposed rule relate to subject matter, referred to in said § 5665, over which the Commission has jurisdiction?

"A telephone directory is an essential instrumentality in connection with the peculiar service which a telephone company offers for public benefit and convenience." (62 CJ 283, § 338.)

"It is the duty of the telephone company to furnish subscribers with all reasonable facilities required for the efficient operation of its telephone service, including a correct listing of the names of the subscribers and the number and location of their telephones in the alphabetical directories issued by it and it must furnish such directories to its subscribers." (52 Am Jur 125, § 95.)

It appears that in as much as the proposed rule relates to the directory listings of the company it pertains to "privileges or facilities" of the company within the purview of the said § 5665 and the Commission therefore has authority to consider the subject matter of the rule. Indeed, in Case No. 2303, in Re Farmers Teleph. Co., decided May 1, 1920, 9 Mo PSCR 265, the Commission *ordered* the Farmers Telephone Company to proceed to issue, at the earliest possible date, an exchange directory.

II

[2] The second question which should be decided is whether or not the rule is lawful. The law is well settled that one may not contract against his liability for negligence but that one may contract for liquidated damages incurred when the act causing the damages is not wilful or grossly negligent. In the preparation of a telephone directory involving the listing of a great many names and numbers it is almost inevitable that errors will from time to time appear. The testimony of the general manager of respondent company was to the effect that every reasonable effort is made in the preparation of the directories to cause them to be absolutely correct. The proposed rule does not undertake to exonerate the respondent company from all liability for errors but merely provides for an abatement, in case of error, "not to exceed one-half the service charges for the period from the date of issuance of the directory in which the mistake occurred to the date of issuance of a new directory containing the proper listing."

" . . . the preparation and delivery of a directory is not a primary part of the business of a telephone

company, and it is within the power of the company reasonably to limit its liability for errors and omissions therein, but an unreasonable regulation of this nature does not bind the subscriber." (62 CJ 283, § 338.)

"Since, however, the preparation of the directory is not a primary part of the business of a telephone company, it is reasonable to suppose that the telephone company may by contractual stipulation limit the amount of its liability for injuries resulting from omissions and mistakes in the telephone directory, so long as it does not seek immunity from gross negligence or wilful misconduct." (52 Am Jur 125, § 95.)

In Riaboff v. Pacific Teleph. & Teleg. Co. (1940) 39 Cal App(2d) 775, 3 Cal Supp 194, 34 PUR(NS) 19, 102 P(2d) 465, it was held that a rule of a telephone company limiting liability for errors or omissions in the listings of subscribers in the directory, when filed and in effect pursuant to the requirements of the Public Utilities Act, and referred to in a subscriber's application for service, becomes a part of a subscriber's contract both by reference and by operation of law and, in the absence of any showing that such rule is unreasonable, is binding upon the subscriber.

In Hamilton Employment Service v. New York Teleph. Co. (1930) 253 NY 468, 171 NE 710, affirmed (1930) 228 App Div 625, 238 NY Supp 847, the supreme court of New York expressed the view that telephone companies "have the power to limit their liability in cases where mistakes occur through no fault on their part, or for such mistakes of their employees as will occur through ordinary negligence in spite of the most stringent regulations or the most vigilant general oversight."

In Correll v. Ohio Bell Teleph. Co. (1939) 63 Ohio App 491, 32 PUR (NS) 82, 84, 27 NE(2d) 173, the court of appeals of Ohio stated: "A public utility is, by law, regulated strictly in its operation. Rights and privileges which it might seek under ordinary contractual relationships are curtailed by provisions of the statutes. Its liabilities are likewise regulated and limited by statute. The theory is this that, since it renders a service affecting the public, the state shall regulate and control it in order to prevent injustice, and, further, in consideration of such regulation and control, its liability is and should be defined and limited. In a sense it is a matter of contract, on the one hand by the utility, and on the other by the state representing all its citizens."

It is the opinion of the Commission and it so finds that the proposed rule is lawful.

III

[3–5] This then brings us to the third and last question for consideration, namely, is the proposed rule reasonable? It is asserted by the respondent company that the same or similar rule is now in effect in each of the following states: Kansas, Kentucky, Michigan, Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, and South Carolina. A similar rule (providing for a refund at the monthly rate for each listing for the time an error or omission continues after reasonable notice in writing to the company) was held to be reasonable by

the supreme court of New York. (See Hamilton Case, *supra.*)

The superior court of California sustained a rule which reads as follows: "The company is liable for errors or omissions in the listings of its subscribers in the telephone directory in an amount not in excess of the charge for that exchange service during the effective life of the directory in which the error or omission is made." (See Riaboff Case, *supra,* 34 PUR(NS) at p. 20.)

A rule which contained the same language as that contained in the proposed rule in the instant case was approved by the court of appeals of Ohio. (See Correll Case, *supra.*)

Although this Commission is of the opinion that the principle underlying the proposed rule is reasonable in so far as the rule pertains to subscribers of the telephone company, the Commission does not approve that language of the proposed rule which reads: "Nor will the telephone company be a party to controversies arising between subscribers *or others* as a result of listings published in its directories." (Italics ours.)

The Commission is further of the opinion that the language in the first sentence of the rule (exclusive of the above-quoted language) is unnecessary in order to accomplish the purpose of the rule.

From the standpoint of this Commission's administrative practices, the Commission finds that the proposed rule taken as a whole is objectionable but that the last sentence of the rule is not so objectionable and is proper. It is therefore suggested that if the Missouri Telephone Company shall, within thirty days, file a rule which reads as below quoted, the same will be approved.

"The telephone company's liability for damages on account of interruptions to service due to errors or omissions in directory listings will be limited to a pro rata abatement of the charge for such of the subscriber's service as is affected, the maximum abatement not to exceed one-half the service charges for the period from the date of issuance of the directory in which the mistake occurred to the date of issuance of a new directory containing the proper listing."

It is recommended by the Commission that if the Missouri Telephone Company shall file a rule as above suggested that the same also be published in a conspicuous place in the directory of respondent company so that it may be noted by all of the subscribers of the company.

It is, therefore,

Ordered: 1. That First Revised Sheet No. 16, P.S.C. Mo. No. 9, canceling Original Sheet No. 16, P.S.C. Mo. No. 9, which said first revised sheet contains certain proposed rules and regulations of the Missouri Telephone Company of Columbia, Missouri, is hereby disapproved.

Ordered: 2. That if the Missouri Telephone Company of Columbia, Missouri, shall, within thirty days, file a rule as suggested in this report and order, the same shall be approved.

Ordered: 3. That this order shall be effective ten days from this date and that the secretary of the Commission shall serve certified copies of same on all interested parties.

MISSOURI PUBLIC SERVICE COMMISSION

Re Missouri-Kansas-Texas Railroad Company

Case No. 10587
December 2, 1944

APPLICATION *for authority to issue short-term notes to acquire funds with which to repay an indebtedness; application dismissed for lack of jurisdiction.*

Evidence, § 3 — Judicial notice — Interstate character of railroad.

1. A state Commission, in passing upon a railroad's application for authority to issue short-term notes to acquire funds with which to repay an indebtedness, took judicial notice of the fact that the railroad was an interstate railroad, although that was neither alleged in the application nor shown by the evidence, p. 54.

Interstate commerce, § 5 — State powers — Effect of Federal action.

2. State regulatory statutes relating to a certain subject become and are inoperative when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field or the operation in question and upon the particular subject, p. 54.

Interstate commerce, § 4 — State powers — Absence of Federal action.

3. Congressional failure to prohibit the issuance of securities maturing after one year and not beyond two years from their date without an order of the the Interstate Commerce Commission does not constitute such an absence of Federal action as to give a state authority to regulate the matter, since, although the Interstate Commerce Act does not require approval of the Interstate Commerce Commission before such a carrier may issue securities to mature not later than two years after their date, it exclusively covers the subject matter and renders state statutes inoperative on the same subject by requiring the carrier to file with the Federal Commission a certificate of notification in a prescribed form setting forth as nearly as may be the same matters as those required in respect to the application for authority to issue other securities, p. 54.

Security issues, § 35 — Jurisdiction of state Commission — Interstate railroads.

4. The state Commission does not have jurisdiction over the issuance of short-term notes by an interstate railroad where the railroad is required to file a certificate of notification in a prescribed form with the Interstate Commerce Commission, setting forth practically the same matters as those required in respect to applications for authority to issue long-term securities, although the railroad is not required to obtain Federal Commission approval of the issuance of such short-term securities, p. 54.

By the COMMISSION: This is an application made and filed November 27, 1944, by the Missouri-Kansas-Texas Railroad Company for the authority of this Commission to borrow $2,000,000 with which to refund, or to repay, a like amount of its indebtedness which is due and owing by it on December 30, 1944, to the Reconstruction Finance Corporation.

No notice of a hearing on this application being required or necessary, the matter was heard on Monday, November 27, 1944, by a member of this Commission, and at such hearing evidence in support of the application was adduced.

Finding of Facts

From the evidence adduced, this Commission finds the facts to be:

The applicant is a railroad corporation duly organized and existing under the laws of Missouri and has its principal office in the city of St. Louis, Missouri. On December 19, 1938, the Interstate Commerce Commission approved a loan to this applicant by the Reconstruction Finance Corporation not exceeding $2,824,000, bearing interest at 4 per cent annually for a period of not exceeding three years, the balance on which will amount, on its due date on December 30, 1944 (as afterwards extended), to $2,314,027.51. The applicant intends to pay $314,027.51 of that loan in cash, and asks the authority of this Commission to obtain loans and to issue its 4 notes each bearing 2 per cent interest per annum from 4 banks for $500,000 each and aggregating $2,000,000, with which to obtain funds to fully pay the balance of its said loan from the Reconstruction Finance Corporation.

Each of said notes will be dated at or just prior to said maturity of the said RFC loan and instalments of one-eighth of each note will mature on each succeeding three months' period thereafter. Thus one-half of each of said notes (or one-half the aggregate loans) are payable at periods not later than twelve months after their date, while the remaining one-half of each of said notes (or one-half the aggregate loans) are payable at periods of more than twelve months and not later than two years after their date. The old loan is, and the new one will be, secured by pledge of securities.

Opinion

[1–4] The serious and only question herein is whether or not this Commission has jurisdiction to entertain this application.

The Congress of the United States has enacted the Interstate Commerce Act, being Chap 1 of Title 49 USCA. The chapter covers common carriers, § 1 (1), engaged in the transportation of passengers or property (inter alia) by railroads, § 1 (1)(a), only in so far as such transportation takes place within the United States, § 1 (2), and is exclusive of "the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one state and not shipped to or from a foreign country from or to any place in the United States as aforesaid." Section 1 (2)(a). So the chapter, with the quoted exclusions makes it applicable only to the transportation of passengers or property within the United States in interstate commerce by railroads as common carriers, and we will take judicial notice of the fact

that this applicant is thus engaged, although it is neither alleged in the application or shown by the evidence. However, it is alleged and shown that the debt proposed to be refunded had the approval of the Interstate Commerce Commission, which could not have occurred unless the applicant was so engaged.

And Congress has definitely entered the field respecting the subject of the issuance of securities by such common carriers, § 20a, said Chap 1, Title 49, by requiring such a common carrier to obtain, before its issuance of securities, the order of the Interstate Commerce Commission in the nature of an approval thereof (Ibid, § 20a(2)). Such provisions, however, do not apply to instances of the issuance of notes maturing not more than two years after the date thereof and aggregating not more than 5 per cent of the par value of its outstanding securities (Ibid, § 20a(9)). But in such case the carrier is required within ten days after the making of such notes to file with the Interstate Commerce Commission a certificate of notification thereof in a form prescribed by said Commission setting forth the same matter as is required respecting applications for authority to issue other securities (Ibid, § 20a(9)).

Therefore, this applicant is not required to have the approval of the Interstate Commerce Commission prior to the issuance of the notes here involved but must timely make a report thereof to that Commission.

A railroad corporation organized and existing under the laws of Missouri, as is this applicant, is required by § 5634 Rev Stats Mo 1939 to have the approval of this (Missouri) Commission before it may issue any notes or other evidences of indebtedness payable at periods of more than twelve months after the date thereof, and is expressly authorized by that section to issue its notes maturing at periods of not more than twelve months after their date without such consent.

Thus, taking this Missouri statute and that act of Congress, as each have expressed it, this railroad corporation must, before issuing the proposed notes, have the approval of this (Missouri) Commission before it can issue these notes, some instalments of which are payable at periods of more than one year after their date, while no such prior consent is required to be obtained from the Interstate Commerce Commission to issue such notes since none of them, or any instalments thereof, will mature or be payable more than two years after the dates thereof.

There is a principle of law now well known and clearly established which if applicable here, renders this Missouri statute inoperative. That is the principle that when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field or the operation in question and upon the particular subject, then the state regulatory statutes on the same subject become and are inoperative. State ex inf. Haley v. Missouri P. R. Co. (1929) 323 Mo 653, 19 SW(2d) 879, citing Southern R Co. v. United States (1911) 222 US 20, 56 L ed 72, 32 S Ct 2. See also Pennsylvania R. Co. v. Public Service Commission, 250 US 566, 63 L ed 1142, PUR1920A 909, 911, 40 S Ct 36, where the court said: ". . . when the United States has exercised its exclusive powers over interstate

commerce, so far as to take possession of the field, the states can no more supplement its requirements than they can annul them."

It might be contended (and this is probably the strongest argument to support our jurisdiction), that inasmuch as this act of Congress does not prohibit the issuance of securities maturing after one year and not beyond two years, after their date, without an order of the Interstate Commerce Commission that thereby, and by reason of such omission, it should be held that Congress has not entered that particular field so as (within the above-announced principle) to render inoperative this Missouri statute (§ 5634, *supra*) which, covering the identical subject, expressly prohibits this railroad corporation from issuing such securities without first obtaining the permission of this (Missouri) Commission. In other words, should this omission by Congress be deemed to be a gleaning remaining abandoned in the field so as to belong to this state under the authority of its said statute?

We think not. While the law of the field, under the Mosaic Law, was that all gleanings falling in the harvest, and even the forgotten sheaf left in the field, belonged to the poor and distressed who would appropriate them, we think the modern rule on the subject is less rigid.

When this act is viewed in its entirety it will readily be seen that Congress has made provisions (though not identical to this Missouri statute) applicable to notes of such maturity, and, therefore, has left no such gleaning in the field. As we view it Congress has laid hold of and appropriated the entire subject, or field, covering the issuance of securities by such railroad carriers as are under the act, notwithstanding the lack of identity in the provisions of these statutes, national and state, in the particular respect mentioned.

In our opinion, Congress in the act has set this question at rest, for the following reasons, to wit:

1. The act shows that it exclusively covers the subject of the issuance of securities of common carriers by rail who are engaged in the transportation of passengers or property, within the United States in interstate commerce, limits the purposes for which they may be issued and prescribes which of such securities may, and which may not be issued without first obtaining an order of the Interstate Commerce Commission. (Section 20a, Chap 1, Title 49 USCA.)

2. The act confers an exclusive and plenary jurisdiction upon the Interstate Commerce on the subject and authorizes such a carrier to issue securities and assume obligations or liabilities in accordance with said section (20a *supra*) "without securing approval other than as specified therein" (Par 7 of § 20a *supra*).

3. The act provides that the carrier issuing notes having the maturity in question, shall, within ten days thereafter, file with the Interstate Commerce Commission a certificate of notification, in a prescribed form, setting forth as nearly as may be the same matters as those required in respect to applications for authority to issue other securities.

Although the act of Congress does not require the previously obtained approval of the Interstate Commerce Commission before such a carrier may

issue notes or securities to mature not later than two years after their date, still it exclusively covers the subject matter and lacks no potency to effectually render this Missouri statute inoperative on the same subject, in so far as it relates to this matter before us. Identity of provisions in national and state legislation is not required, herein, in order for the former to render the latter inoperative, since the former obviously exclusively covers the field. If the rule were otherwise, no end of confusion would result, especially if the carrier operates, as does this one, in many states in some of which the national and state legislation might be identical, so as to render the latter inoperative, while in others the provisions in the legislation might not be identical, so as to leave the latter operative or partially so.

We are of the opinion that Congress in its legislation, Chap 1, Title 48 USCA, and especially § 20a thereof, has preëmpted the field in cases of this character respecting the issuance of such notes, securities, and obligations as are proposed herein and conferred jurisdiction upon the Interstate Commerce Commission and therefore § 5634 Rev Stats Mo 1939 is rendered inoperative, and thereby leaves this (Missouri) Commission without any jurisdiction of this pending application.

WISCONSIN PUBLIC SERVICE COMMISSION

Re City of Barron

2-U-1997
February 20, 1945

APPLICATION *of municipal water company for authority to increase rates; granted.*

Rates, § 197 — Unit for rate making — Commonly owned utility.

1. The Commission is required by stated law to regulate utilities under common ownership separately so that electric customers, for example, are not loaded with a large part of the cost of serving water customers, p. 58.

Return, § 18 — Right to return — Municipal plant.

2. A city water utility should not be required to operate at a loss or with the probability of a loss, p. 60.

By the COMMISSION: The city of Barron, Barron county, as a water public utility, filed an application with the Commission on September 15, 1944, for authority to increase water rates approximately $2,000 a year. A notice of investigation was issued on September 27th and a notice of hearing was issued on October 18.

Hearing: November 16, 1944 at Barron before Examiner Calmer Browy.

APPEARANCES: Barron Light & Water Commission, by B. J. Becker,

Superintendent, L. C. Nicklow, Clerk, and R. A. Kuhnley, City Clerk.

The applicant served notice of the application upon and consented to the timely intervention of the Federal Office of Price Administration. Although such agency did not participate in the hearing, it sent a letter to the applicant with a copy to the Commission on October 26th which reads in part: "An analysis of your annual reports for 1942 and 1943 indicates that on an over-all basis, and under present rates, an adequate return is currently being earned by the city of Barron on the combined operation of its water and electric utilities. This Office has successfully contended before various regulatory bodies that a utility earning a fair return on a consolidated basis should not be permitted to raise rates on one portion of its operations, merely because that portion happens to be operating at a deficit. We feel that such a policy is especially appropriate in the case of a municipal utility.

"We respectfully urge you, therefore, to reconsider your proposal in the light of the national stabilization program. The importance of avoiding any increase in the cost of living through higher utility rates during the present emergency, however justifiable such increase might be under normal conditions, cannot be emphasized too strongly. Your coöperation in this matter, will therefore, constitute a genuine contribution to our national stabilization program."

[1] The law of this state, as interpreted by our courts, requires us to regulate utilities under common ownership separately so that electric customers, for example, are not loaded with a large part of the cost of serving water consumers. Even in a city the size of Barron, there is no probability that the group of electric customers will be identical with the group of water consumers, nor that if the two groups are identical there will be any correlation between use of electricity and water. For example, an industrial concern may be a large user of electricity but have its own well, or it may be served directly from the high line of a large system utility but be the largest customer of the municipal water department.

Present water rates of the applicant are:

Minimum Charges

⅝-inch meter per quarter	$2.00
¾-inch " " "	2.00
1- inch " " "	2.50
1½-inch " " "	3.00
2- inch " " "	5.00
3- inch " " "	10.00
4- inch " " "	25.00

Each additional consumer on the same meter ..... .50

Each dwelling, flat, suite, store, tenant, etc., shall be regarded as one consumer in determining the minimum charge.

Output Charges

First	6,000	gallons per quarter for all sizes of meters shall be allowed to be consumed under the minimum charge.	
Next	20,000	gallons per quarter	20 cents net per M gal.
"	74,000	" " "	15 " " " " "
Over	100,000	" " "	10 " " " " "

The utility shall bill all metered customers quarterly.

Penalty for nonpayment shall be 5 per cent applied as stated in rules and regulations.

The proposed rates are:

Minimum Charge

⅝-inch meter per quarter	$2.50
¾-inch " " "	2.50
1- inch " " "	2.50
1½-inch " " "	3.00
2- inch " " "	5.00
3- inch " " "	10.00
4- inch " " "	25.00
Each additional consumer on the same meter	1.00

Each dwelling, flat, suite, store, tenant, etc., shall be regarded as one consumer in determining the minimum charge.

Output Charges

First 6,000 gallons per quarter	30	cents per M gal.
Next 20,000 " " "	25	" " " "
Next 74,000 " " "	20	" " " "
Over 100,000 " " "	15	" " " "

The utility shall bill all metered customers quarterly. Penalty for nonpayment shall be 5 per cent applied as stated in rules and regulations.

The record in this case includes data recently secured through correspondence with the applicant. Provision was made at the hearing for inclusion of such data in the record.

The rate increase is desired because the city water department has failed to show a profit during recent years. The application states that rates which were adequate years ago, no longer are adequate because the cost of operation has increased as a result of higher wages and higher material prices.

According to the testimony, the applicant proposes to have the minimum charge cover 8,800 gallons of water per quarter. Proposed rates were designed by the applicant to produce sufficient additional revenue to defray increased operating expenses. The applicant did not attempt to prepare rate schedules that would correlate charges to customers with the cost of service. The proposed schedule would increase the minimum or service charge on ⅝-inch and 1-inch meters and allow all other sizes to remain at the present rate. The utility contends that the cost of a larger installation is an insignificant factor. However, we cannot agree with this contention because not only must consideration be given to the higher capital expense involved but also to an apportionment of the cost of being ready to serve the larger demand occasioned by such larger services. The rates authorized will reflect an apportionment of a readiness-to-serve cost on the basis of the size of the meter.

According to the testimony, the utility desires to increase revenues approximately $2,000 yearly, and we estimate that the rates which we will authorize will increase revenues $2,040 per year. Although such an increase will not result in a full return, it will assure adequate income to meet operating expenses. Some claim was made that the 1944 operating expenses would be higher than for 1943, but no definite basis for division of the amount between water and electric utilities was furnished. Since the utility has professed an interest in meeting operating expenses and our estimate indicates that $2,130 will be available for return on investment, we are not greatly concerned with the increased operating cost of the com-

bined utilities of $1,000 per year. However, it would require an increase in expenses in 1944 of only $90 to cause an operating deficit.

On the basis of 1943 operating expenses and our estimate of income under the rates to be authorized in this case, we estimate the income and expenses of the utility as follows:

	Apportioned Cost	Revenues	Difference
Fire Protection Service	$2,220	$2,592	$372
General Service ..	8,645	10,403	1,758
Total	$10,865	$12,995	$2,130

The above estimate includes an allowance for local and school taxes of $1,768 and a depreciation allowance of $1,630. A return on a net book value plant of $68,038 of 3.1 per cent is indicated.

[2] We have held in our decision of May 5, 1942, in Re Wisconsin Teleph. Co. 26 Wis PSCR 92, 43 PUR(NS) 193, for authority to revise the base rate area and rates and rules at its Madison Exchange, that rates should not be increased during the war if they are adequate to cover operating expenses. In this case, as pointed out above, an increase of only $90 in expenses in 1944 would have caused an operating deficit. We do not consider that a city water utility should be required to operate at a loss or with the probability of a loss.

The Commission finds:

That existing rates of the city of Barron as a water public utility for general service are unreasonable and inadequate and that the rates for general service herein ordered are reasonable.

CONNECTICUT PUBLIC UTILITIES COMMISSION

Re Homer H. Judd

Docket No. 7576
March 13, 1945

COMPLAINT *against charges for water service; dismissed for lack of jurisdiction.*

Public utilities, § 122 — Status of water supply — Service by tract owner.

Water service furnished by the owner of a tract of land to cottage owners who have purchased lots from him is not a public utility service subject to regulation under the provisions of the statute vesting power in the Commission over water companies, where service is limited to the particular development with the understanding that cottage owners would at some time in the future reimburse the tract owner for the cost of the water supply and operate it for their own mutual benefit, and where no public highways are used in distribution.

By the COMMISSION: By letter dated October 3, 1944, addressed to the Commission, Jane A. Flynn of Bristol, Connecticut, stated that she and her sister owned a cottage at Tyler Lake Heights in the town of Goshen and that they had bought the land from Homer H. Judd of Bristol and Goshen, Connecticut, upon his oral representation that the cost of the water would not be more than $10 per year. She stated further in this letter that Mr. Judd had charged $10 per year for six years up to 1942 for water service, that in 1943 he increased the charge to $15 and in 1944 again increased the charge to $25. She stated further that thirty-two cottages were served from this water system, protested the reasonableness of the $25 charge and requested advice from the Commission respecting her complaint.

In a letter to Miss Flynn dated October 26, 1944, the Commission reviewed the status of this water supply, based upon an informal investigation of one of its engineers with a representative of the state department of health as a result of an oral complaint on the same subject by two other cottage owners, Mr. Edward T. Lally of Hartford, Connecticut, and John E. McCarthy of Bristol, Connecticut. As a result of subsequent correspondence between Miss Flynn and the Commission in November, 1944, the Commission treated her correspondence as a complaint respecting the reasonableness of the rates for water service being charged by Mr. Judd at Tyler Lake Heights in the town of Goshen. Accordingly, under date of December 1, 1944, the Commission, in a communication addressed to Mr. Judd, informed him of the complaints it had received respecting the charge he was making for water supplied at Tyler Lake Heights in Goshen and formally advised him as follows:

"You are, therefore, notified that the Commission is assigning for a hearing the complaints of Miss Jane A. Flynn and her sister and of Edward T. Lally and John McCarthy to be held at the office of the Commission, State Office Building, Hartford, Connecticut, on Wednesday, December 13, 1944, at 11 o'clock in the forenoon, at which time and place you will be required to show (1) whether you are performing a public utility service subject to regulation by the Commission and if so, (2) to show that the rates for water service you are now charging in Tyler Lake Heights, Goshen, Connecticut, are just and reasonable."

Notice of this hearing was given to Miss Jane A. Flynn and to other complainants of the water service. At the time and place assigned for a hearing Jane A. Flynn and Mary E. Flynn of Bristol appeared in person and by counsel in support of their complaint. Homer H. Judd appeared in person and by counsel in opposition to the complaint.

At the hearing the facts set forth below were established from the testimony of the complainant and Mr. Judd.

Homer H. Judd owns a development comprising 160 acres of land located on or adjacent to Tyler lake in the town of Goshen. The development is known as Tyler Lake Heights and he has laid out 100 lots on or adjacent to the shore of the lake for summer residences. He sells water as an in-

dividual to thirty-one owners of cottages at the present time. The development began in about 1934 about which time five cottages had been constructed on the development. They took water from a nearby spring which did not have any pipes connecting the spring with the cottages. Mr. Judd had dug this spring at the suggestion of the owners of the then existing cottages.

In about 1935 Mr. Judd constructed an artesian well on the development, installed a pump and laid about 2,750 feet of 2-inch pipe in the roads serving the development. Title to the land comprising these roads in the development is vested in Mr. Judd. There are no public highways in the development. The total cost of constructing the new water supply approximated $7,035. At the time the new supply was completed there were six cottages on the development. In the deed from Mr. Judd to the owners of the lots, on which these six cottages had been constructed, was a provision that if an association of cottages should be formed and that association should vote to install a water pipe-line system on the development and the owner of the lot should elect to connect with that water system, he would pay his proportionate share of the cost of constructing the water system to the duly authorized agent of the association.

No association was actually formed until about 1942, although an association was in the contemplation of the owners of the cottages as the development grew. In making sales of lots to prospective cottage owners, Mr. Judd informed them of the availability of a water supply. The existence of a water supply was a factor in inducing people to buy a lot. It has always been the intention of Mr. Judd to limit the sale of water to buyers of lots on the development in the expectation that the owners of the lots would form an association and take over the existing water supply at a fair price and operate it themselves. He offered in 1944 to sell the water system to the cottage owners' association at $5,000. This offer was not accepted.

The initial charge to the cottage owners for water was $10 annually. Mr. Judd increased the charge to $15 annually in 1943 and again to $25 annually in 1944. Water taken by the cottage owners is used for the general purposes of their summer households. Mr. Judd has supplied water upon essentially a nonprofit basis.

The well supply and pump have a capacity sufficient to provide water to cottages on the 100 lots in the development. However, it will be necessary to increase the size of the pipe and to lay pipe in other roads in the development in order to increase service beyond a maximum of forty cottages. There is no water company authorized by the general assembly to supply water in the town of Goshen. Mr. Judd does not sell water to any person other than the present owners of cottages on the development.

Miss Jane A. Flynn and Miss Mary E. Flynn, both of Bristol, purchased a lot from Mr. Judd in 1940, relying upon the existence of a water supply, and constructed a cottage thereon in about that year.

Whether or not the water system owned and operated by Mr. Judd is a water company subject to regulation by the Commission depends upon an

interpretation of "water company" as defined in § 3577 of the General Statutes. That definition reads as follows: "'Water company' shall include every corporation, company, association, joint stock association, partnership or person, or lessee thereof, owning, maintaining, operating, managing, or controlling any pond, lake, reservoir, or distributing plant employed *for the purpose of supplying water for general domestic use in any town, city, or borough, or portion thereof, within this state.*"

The italicized portion of the statute is the part directly concerned with the question. General domestic use of water appears to connote primarily use for household purposes and secondarily use for the commercial and industrial purposes for which a water supply is useful. Ordinarily, also, the italicized portion of the section indicates an intent that the distribution of water in the town, city, or borough must be broad, rather than restricted, in reaching a conclusion that the supply is a public supply and subject to regulation rather than a private supply.

Hence, a use of the public highways for the purposes of supplying water under grant by a proper authority would be a strong indication that the water supply is a public one. The general assembly appears to be the authority in which is vested the power to grant, through a special act, the privilege of using the public highways in supplying water for general domestic use or in using the highways for any other public utility service. See, for example, the case of Canastota Knife Co. v. Newington Tramway Co. (1897) 69 Conn 146, 36 Atl 1107, where use of the public highways for a public utility purpose is discussed at length; also New York, N. H. & H. R. Co. v. Fair Haven & W. R. Co. (1898) 70 Conn 610, 40 Atl 607, 41 Atl 169, and Re New York, N. H. & H. R. Co. (1902) 75 Conn 264, 266, 53 Atl 314; St. Tammany Waterworks Co. v. New Orleans Waterworks Co. (1887) 120 US 64, 30 L ed 563, 7 S Ct 405. See also, among other statutes, Section 3395 of the General Statutes which denies to a corporation, formed under the general stock corporation law, the power to transact in this state the business of "railroad or street railway company, telegraph company, gas, electric light, or water company, . . ." The respondent does not use the public highways in supplying water at Tyler Heights and, of course, has no grant from the general assembly.

While a water supply may constitute a public utility subject to regulation, even though the service is limited to relatively few people, particularly where the public highway is used in distributing the water, obviously a limitation in the use of the water supply, the number of customers served, and the ability to serve additional customers would be a strong indication that the water supply is a private rather than a public supply subject to regulation.

The legal test to be applied to all the available evidence in reaching a conclusion as to whether the water supply is a public or private supply can be and often has been stated in different ways. Applying the common and historical test, the available evidence does not reasonably justify the conclusion that Homer H. Judd has held himself

out to serve the general public with water in any portion of the town of Goshen. On the contrary, the evidence discloses that he has sold water as an incident to his real estate development, limited to the particular development and with the understanding that the owners of the cottages would at some time in the future reimburse him for the cost of the water supply and operate the supply for their own mutual benefit. The water system which he operates may be somewhat likened in its legal effect to that of a coöperative enterprise which limits its service to its own stockholders or members of the coöperative and does not serve or hold itself out as willing to serve the public. Under such circumstances a coöperative is not regarded as a public utility. See annotation in 132 ALR, p. 1495.

It appearing from consideration of the evidence and investigation of the legal principles applicable to this question that the water supply of Mr. Judd is not a water company subject to regulation by the Commission under § 3577 of the General Statutes, the Commission submitted a transcript of the evidence at the hearing to the attorney general, together with a record of the Commission's research under the legal aspects of the question, and requested his advice whether the water supply of Mr. Judd is or is not a public utility subject to regulation. The attorney general has advised the Commission that, in his opinion, the water supply of Homer H. Judd at Tyler Lake Heights in the town of Goshen is not a public utility subject to regulation by the Commission, within either the law or the facts of the case.

In view of the evidence presented at the hearing before the Commission in this matter, consideration of the law in the case and the opinion of the attorney general, the Commission concludes that the water service being furnished by Homer H. Judd at Tyler Lake Heights in the town of Goshen is not a public utility subject to regulation by the Commission under the provisions of the statutes vesting power in the Commission over water companies.

The Commission, therefore, *orders* that the complaint be, and it hereby is, dismissed for lack of jurisdiction.

We hereby direct that notice of the foregoing be given by the Secretary of this Commission by forwarding true and correct copies thereof to parties in interest, and due return make.

Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.

"Music-at-Work"

EXECUTONE, INC., makers of intercommunication and sound equipment for industry (see ad, page 34, this issue), announces the publication of a booklet entitled "The Story of Music-at-Work." This booklet points out the following advantages which may be gained by industry through the medium of music:

1. Music is enthusiastically welcomed by employees. (Investigations show that between 98 and 99 per cent of all employees in plants where music is played are wholeheartedly in favor of it.)

2. Music discourages employees from leaving their places of work during the day, and in reducing premature departures.

3. Music reduces employee absenteeism.

4. Music makes difficult work easier and speeds up production.

5. Music overcomes fatigue.

It is also pointed out that a sound system may be employed, not only for bringing music to employees, with all the attendant benefits to production and morale, but also for locating employees immediately through voice-paging. Paging by voice also eliminates the necessity for decoding distracting bells.

Copies of the publication may be obtained from the manufacturer, 415 Lexington Ave., New York 17, N. Y.

Iron Fireman's Snow Cruisers

THE Iron Fireman Manufacturing Company of Portland, Oregon, has recently completed an Army Ordnance contract for construction of the first 40 "snow cruisers" to be used by the Army Air Corps for search and rescue work in snowbound areas, according to a recent announcement.

Although the snow cruisers are now built exclusively for the air corps, they promise new strides for postwar freighting of supplies and personnel, as well as for use in the maintenance of power transmission lines, over snowy mountainous areas.

The light-weight, wide treaded tractor is capable of transporting as much as 4,000 pounds in deep snow and up steep grades as high as 35°. Built of four component parts—two tracks, power section, and cab—it can be readily dismantled for transportation by a plane.

According to the manufacturer, tests made in Nome, Alaska, and with ski troops in Colorado have proved the machine is capable of traveling 18 miles an hour under average conditions, and 2 miles an hour under difficult snow conditions and steep grades. An especially wide track system with broad footing area prevents sinking in the deepest snow. A low center of gravity prevents tipping on steep sidehills. The deep grousers produce tractive effort even in "powder snow."

The snow cruiser cabs will accommodate three men and an operator, and, if necessary, can carry two litters. They are radio equipped, enabling communication with planes or other tractors.

It is planned to manufacture the snow cruisers on a commercial basis after the war.

Construction Bulletin

A COMPREHENSIVE picture story of the fabrication and erection of gas holders, storage tanks, processing vessels, and other structures is contained in general bulletin G-45 of the Stacey Bros. Gas Construction Company, Cincinnati, Ohio—one of the Dresser Industries.

Available on request, the 44-page bulletin shows the company's production and erection facilities in action, and illustrates in detail many of the products such as gas holders, storage tanks, and processing equipment which Stacey Bros. builds for the gas, petroleum, chemical, and food industries.

Fast-acting Fire Extinguisher

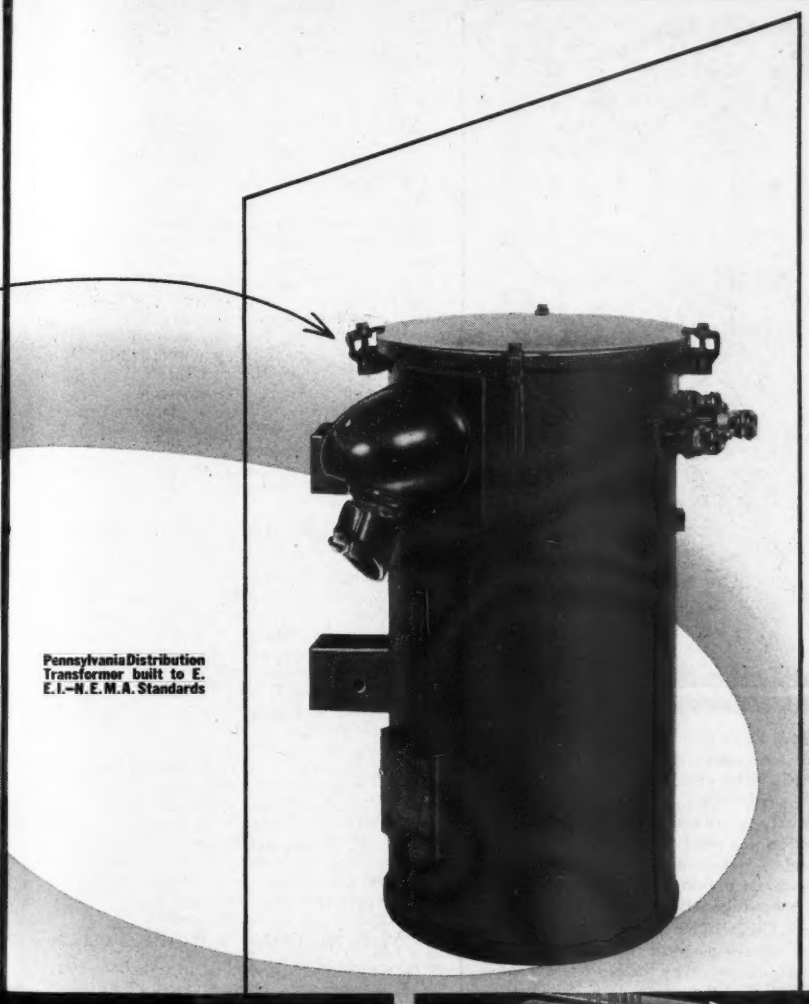
A NEW fast-acting portable fire extinguisher, Alfite Speedex, is announced by American-LaFrance-Foamite Corporation of Elmira, New York.

Alfite Speedex is engineered to more speedily extinguish small oil or electrical fires, with no loss of the important extinguishing gas on anything but the fire itself.

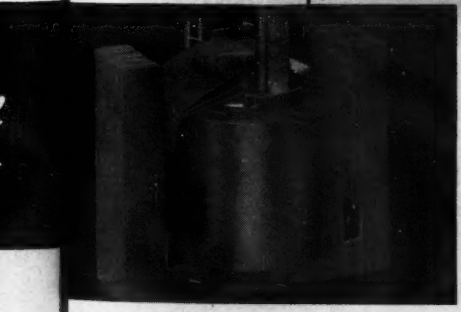
This unit is made in 3 different sizes, models 15, 10, and 4, and uses carbon dioxide as the fire extinguishing agent. The numbers indicate the pound capacity of the gas.

All models are approved by Underwriters' and Factory Mutual Laboratories. Models 4

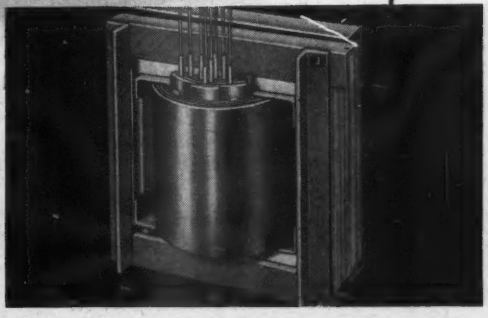
(*Continued on page* 36)



Pennsylvania Distribution Transformer built to E. E. I.–N. E. M. A. Standards



Coil mounted firmly on Core before yoke steel is built in.



Core and Coil unit ready for assembly.

(*Continued from page* 33)

and 15 also carry the approval of the U. S. Coast Guard.

Illustrated literature is available from the manufacturer.

W. S. Lowe Named President Winsted Hardware Mfg. Co.

WILLIAM S. LOWE has been named president and operating head of the Winsted Hardware Manufacturing Company of Winsted, Connecticut, according to an announcement by Laurence D. Ely, chairman of the board of Reeves-Ely Laboratories, Inc., the parent concern. The Winsted Company, currently engaged in the manufacture of war material, has announced postwar plans for building several types of irons including the "Durabilt Utility Iron," the conventional automatic iron, and the Waring steam iron.

The company will also manufacture the Waring Blendor and other home electric appliances. Its products will be distributed by the D. E. Sanford Company with headquarters at 36 West 47th street, New York city.

Westinghouse Appointments

THE appointment of Lee C. Bennett to the position of central station manager of the Middle Atlantic district of Westinghouse Electric & Mfg. Company has been announced by E. W. Loomis, manager of the Middle Atlantic district. Mr. Bennett will also retain the position of marine manager for the Middle Atlantic district, and his headquarters will continue to be in Philadelphia, Pennsylvania. He succeeds William P. Cochran who is retiring after 38 years with the company.

H. E. Bailey has been appointed as district utilities manager for the North Pacific district of the Westinghouse Electric Supply Company, with headquarters in Seattle, according to W. M. Jewell, manager of the district. In his new position Mr. Bailey will have complete responsibility for the development of all public and private utility business.

Multipurpose Circuit Tester

A NEW multipurpose circuit tester product of a rugged, self-contained, light-weight portable testing unit for acceptance tests of residential and commercial wiring is announced by the Connecticut Telephone & Electric Division of Great American Industries, Inc., Meriden, Connecticut.

Basically, the tester is used for testing insulation between wires or from wires to the ground for defects or failures and the continuity of wires with audible positive answers at the point where the test is made. With a special indicator attachment it also determines the polarity of wires, visually. It operates on a hand cranked generator which develops 500 VDC regulated to assure a uniform test regardless of cranking speed.

According to the manufacturer, an inexperienced operator can operate the tester successfully with a minimum of instruction.

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Ever since Guadalcanal the *United States Marines* have proved that boys from Kokomo, the Ozarks and the Bronx—when steeped in Marine Tradition, skilled with Marine training—are doggone good fighters. On beachhead after beachhead—in jungle after jungle—they have been far outnumbered by the Japs. But not outfought!

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They have good equipment, sure. Most of the thousands of trucks they use, for example, are Internationals. And most of the thousands of bulldozing tractors they use are Internationals, too. Trucks and tractors —vital weapons in this grim, modern war!

But proud as we are that Harvester has been able to make equipment rugged enough to fight with the Marines, we know that the real fighting machine in this march to Tokyo is the Marine himself. What a machine! All speeds forward . . . none reverse. Tough, rugged, smart. A superlative fighter, a superb citizen.

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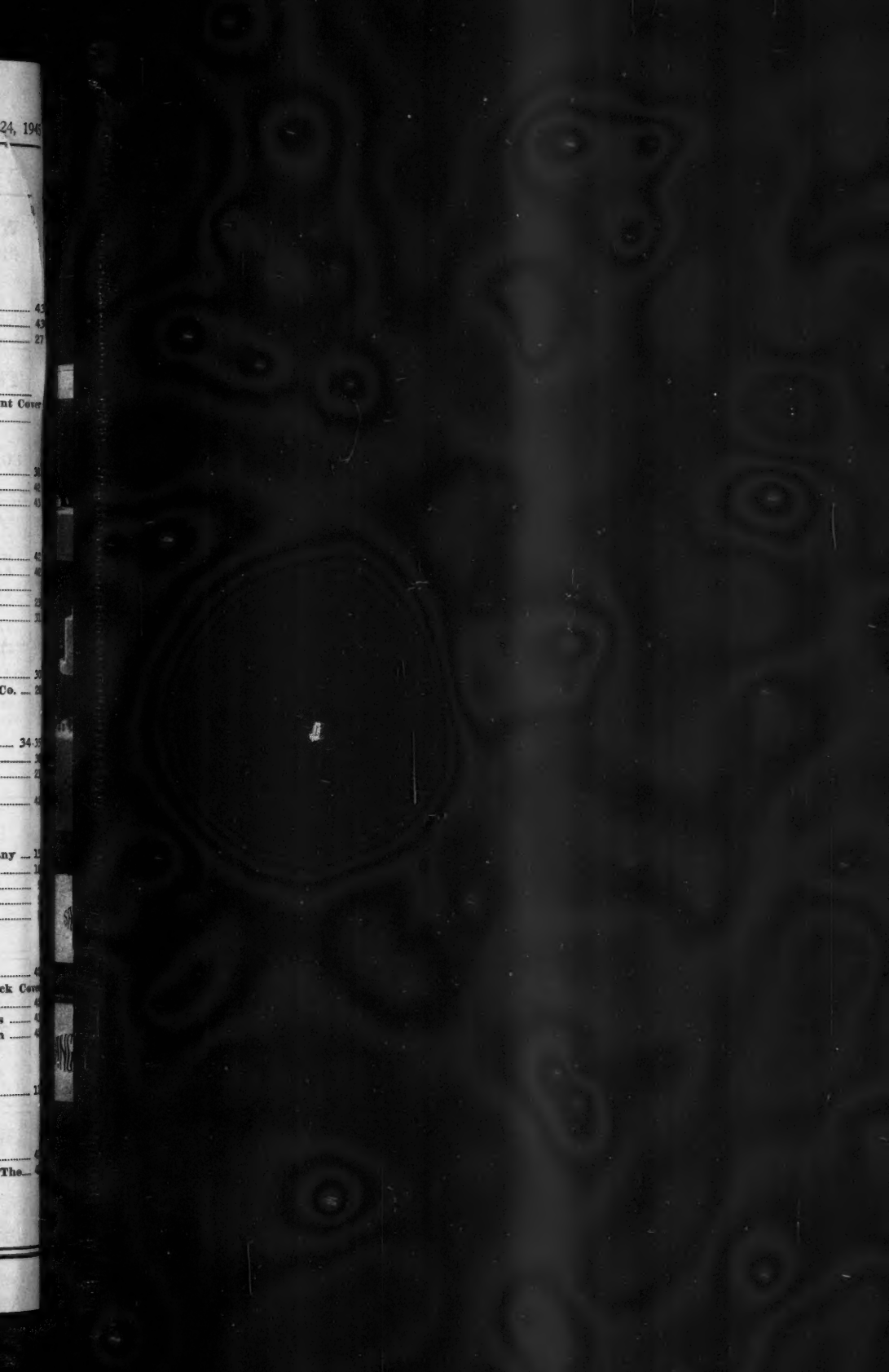


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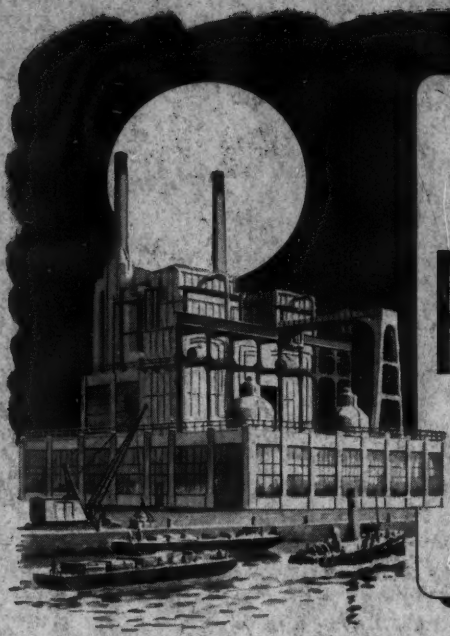

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